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G. A. Cohen and What Type of Society We Ought to Seek

by

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Declaration and Inclusion of Material from a Prior Thesis

I declare that this thesis is my own work, that it includes no material used previously (other than some exegesis on Marx), and that it has not been submitted for a degree at another university.

Abstract

In this thesis I attempt to clarify and evaluate G. A. Cohen's positive contribution to the question of what type of society we ought to seek, following his turn from Marxism to normative political philosophy. I specifically focus on clarifying and evaluating certain views that appear in his critical engagement with Ronald Dworkin and John Rawls, and in his positive vision of society as set out in *Why Not Socialism?* I interpret Cohen as holding that, in principle, we ought to seek a society that reflects equal access to advantage (or some other luck egalitarian principle of equality of opportunity), Pareto-efficiency, freedom of occupational choice, and a principle of community that, by means of voluntary non-state agency, significantly tempers inequalities consistent with luck egalitarianism. With respect to evaluative matters, I argue: (i) that we ought not to embrace equal access to advantage but rather an alternative luck egalitarian principle of equality of opportunity where opportunities are specified in terms of resources; (ii) that although equality of opportunity, Pareto-efficiency and freedom of occupational choice *might* be co-obtainable in principle, they are not co-obtainable in practice; and (iii) that in practice equality of opportunity ought to be constrained by a sufficiency qualification rather than by Cohen's community principle. In addition, I interpret a concession from Cohen about Pareto-efficiency often trumping equality of opportunity, in practice, in terms of a pluralist distributive ethic that combines telic egalitarian and telic prioritarian beliefs. I defend the plausibility of this ethic to some extent, but ultimately come to embrace a sufficiency-constrained luck egalitarianism that secures a decent life for all by means of state coercion, and which minimizes the unfairness of the prudent having to bear the costs of other's imprudence.

Introduction

1. Why Cohen?

1.1. As a first year undergraduate studying Politics and International Relations at the University of Kent, I first became aware of G. A. (Jerry) Cohen in late 2007. Following a political theory lecture on Isaiah Berlin's "Two Concepts of Liberty," an article called "Freedom and Money" caught my eye among the additional readings. As a somewhat naïve young Marxist, Cohen's principle contention in this article that a 'lack of money, poverty, carries with it lack of freedom' (Cohen, 2011f, pp. 166-167), was a view with which I greatly sympathized.

Over the next three years of my degree, my interest in the views of Karl Marx led me to choose, wherever possible, any course that enabled me to learn more about his thought. Of course, one of the titles on my reading list during this period was Cohen's 1978 work, *Karl Marx's Theory of History*. My interest in Marx, particularly with his theory of alienation, continued into postgraduate study. But then I happened upon a more recent argument from Cohen as to why leftists ought to turn away from Marxism and engage in normative political philosophy. The argument to which I refer is made in "Equality: From Fact to Norm," the sixth chapter of Cohen's 2000 work, *If you're an Egalitarian, How Come You're So Rich?*, and draws on material published in his 1995 work, *Self-ownership, Freedom, and Equality*. The subject of this argument is classical Marxist beliefs about the historical inevitability of socialist revolution and

resource abundance that are supposed to render redistributive means for securing equality unnecessary.

1.2. As regards the belief in the historical inevitability of socialist revolution, Cohen rightly notes that it relies on a conception of the working class as: producing the wealth of society; being the exploited people in society; constituting the majority of society; and being the needy people in society. From this conception of the working class, so the argument goes, their neediness together with their being the majority and the producers on which society is dependent makes socialist revolution inevitable, because ‘it was within the capacity and in the interest of the working class to change society, so that it could and would transform society’ (Cohen, 2000, p. 107; Cohen, 1995, p. 155). But, as Cohen argues in both *If You’re an Egalitarian* and *Self-ownership*:

[T]here is now no group in advanced industrial society which unites the four characteristics of: (1) being the producers on whom society depends, (2) being exploited, (3) being (with their families) the majority of society, and (4) being in dire need. There certainly still exist key producers, exploited people, and needy people, but these are not now, as they were in the past, even roughly coincident designations, nor, still less, alternative designations of the great majority of the population. And as a result, there is now no group with both (because of its exploitation, and its neediness) a compelling interest in, and

(because of its productiveness, and its numbers) a ready capacity to achieve, a socialist transformation.

(Cohen, 2000, pp. 107-108; Cohen, 1995, p. 8)

A common counter argument acknowledged by Cohen is that the four constitutive elements of the above conception of the working class are still present at a global level. In other words, the counter argument appeals to the emergence of an international proletariat. Having an interest in the anti-capitalist movement, the Zapatista Army of National Liberation in Mexico, and the emergence of socialist governments across Latin America, this was my go to response when people pressed arguments, albeit with far less clarity, of the sort I was now reading from Cohen. Yet as I continued to read, the following passage convinced me it was false.

It is no doubt true that, across the countries which form the bulk of the world's population, there are producers, previously cut off from capitalism, who amply realize the exploitation and need characteristics... But they do not form a majority within or across the societies in question, which remain largely agrarian, and they do not represent producers on whose labor capitalism is dependent, in the traditional projected sense. For the engine of production in today's world is the transnational corporation, which absorbs and expels sets of workers at will. No group of its workers has substantial clout, because so many other groups form

a kind of reserve army vis-à-vis any one of those groups. The actual and potential proletariats of India and China are ready to displace the workers of Birmingham, Detroit, and Lille, and of Manila and Sao Paolo and Capetown.

(Cohen, 2000, p. 111)

If we avoid the distinction between industrial and agrarian producers, it seems to me that the exploited and needy producers of the world may well form a majority; the extent to which the world is dependent on them, and therefore the extent of their power to transform society, is another matter. With respect to industrial producers, I entirely agree with Cohen that the power of transnational corporations to transfer their workforce from one region to another has the consequence that no society is dependent on its own industrial working class. The world may be dependent on an international working class, but unless the rallying call of *The Communist Manifesto* is realized, unless ‘WORKING MEN [AND WOMEN] OF ALL COUNTRIES, UNITE!’ (Marx and Engels, 1977, p. 246), that dependency is not by itself a capacity to transform society, and the additional requirement of international unity seems unlikely. For as Cohen says, ‘the cultural diversity across nations and the huge gulfs between them in actual and expected living standards make mutual identification... difficult’ (Cohen, 2000, p. 112). It is hard, for example, to imagine needy individuals in one region of the world refusing employment in solidarity with other relatively less needy individuals thousands of miles away, and with whom they share little in common, in an attempt to combat the power of transnational corporations to

switch their base of operations whenever wage-laborers become ‘too demanding.’ Far from being historically inevitable, then, socialist revolution appears highly improbable.

As regards the belief in the historical inevitability of resource abundance, this relates to a famous passage from the *Critique of the Gotha Programme* where Marx gives an account as to how society’s resources will be distributed in the lower and higher phases of communism. In the lower phase (the initial phase after the fall of capitalism) resources will be distributed in accordance with people’s labor contribution minus a deduction for common funds (*the contribution principle*). Despite ownership of the means of production no longer playing a distributive role, Marx objects to the contribution principle because ‘it tacitly recognizes unequal individual endowment and thus productive capacity as natural privileges’ (Marx, 1977, pp. 568-569). In other words, Marx recognizes that because of differences in people’s natural abilities the contribution principle will arbitrarily reward some more than others, and because of differences in people’s circumstances, it may also reward those who are less needy than others. The lower phase of communism therefore remains ‘stigmatized by a bourgeois limitation’ (Marx, 1977, p. 568). But in the higher phase of communism, ‘after the productive forces have also increased with the all round development of the individual, and all the springs of co-operative wealth flow more abundantly..., society [can] inscribe on its banners: from each according to his ability, to each according to his needs’ (*the needs principle*) (Marx, 1977, p. 569).¹

¹ For greater clarification re this passage, see Chapter 4, section 2.3.

Exactly what level of resource abundance Marx thought historically inevitable and necessary for the implementation of the needs principle is a subject of great debate.² Cohen's interpretation, with which I agree, is that Marx envisaged 'a plenary abundance [that] ensures extensive compatibility among the material interests of differently endowed people: that abundance eliminates the problem of justice, the need to decide who gets what at whose expense, and *a fortiori*, the need to implement any such decisions by force' (Cohen, 1995, p. 127). Interpreted as such, the historical inevitability of resource abundance from a 21st century perspective, like the supposed inevitability of socialist revolution, again seems highly improbable. For as Cohen argues, fossil fuels are depleting and new means of satisfying humanity's current consumption levels may prove impossible, let alone the satisfaction of human needs and wants to an extent that would render distributive justice obsolete (Cohen, 2000, p. 113; Cohen, 1995, p. 9). He therefore concludes:

We cannot rely on technology to fix things for us; if they can be fixed, then *we* have to fix them, through hard theoretical and political labor. Marxism thought that equality would be delivered to us, by abundance, but we have to seek equality for a context of scarcity, and we consequently have to be far more clear than we were about what we are seeking, why we are justified in seeking it, and how it can be implemented institutionally. That recognition

² See (for example): Buchanan, 1982; Cohen, 1995 & 2000; Elster, 1985; Geras, 1985; and Lukes, 1985.

must govern the future efforts of socialist economists and philosophers.

(Cohen, 2000, p. 115; Cohen, 1995, p. 11)

1.3. The above argument altered the course of my studies, for Cohen had succeeded in convincing me that I ought to turn from Marxism to normative political philosophy. More specifically, his concluding remarks convinced me that leftists need to be clear about *what type of society we ought to seek*. Whereas Cohen had come to this conclusion sometime prior to 1996³, he had convinced me of it in 2010; a year after his death. Naturally, I wondered whether he had sought, during those intervening years, to develop such a view.

His turn from Marxism to normative political philosophy resulted, as he says, in ‘a sustained engagement with the work of three leading American political philosophers: Robert Nozick, Ronald Dworkin, and John Rawls’ (Cohen, 2000, p. 117). At the time of first reading “Equality: From Fact to Norm,” I was somewhat familiar with his critique of Nozick (more so with how it relates to classical Marxism⁴), but not with the nature of his engagement with Dworkin and Rawls. As I began to familiarize myself with the relevant texts it soon became clear that, as with Nozick, Cohen’s engagement with Dworkin and Rawls takes the form of critique. A positive view of what type of society we ought to seek is not therefore clearly set out in these writings.

³ Although *If You’re an Egalitarian* was published in 2000, its content is based on Cohen’s Gifford Lectures which he delivered at the University of Edinburgh in 1996. And, although *Self-ownership* was published in 1995, it draws on material published in earlier articles (see Cohen, 1995, p. x).

⁴ See section 3.2

A notable exception to Cohen's preference for critically engaging with others is *Why Not Socialism?*, first published in 2001⁵ and posthumously as a small hardback in 2009, where he outlines a positive vision of society that reflects a principle of equality of opportunity and a principle of community. However, it is only a short exploratory essay that, by itself, provides insufficient insight as to what type of society Cohen believes we ought to seek. Considering how influential his critical engagement with Nozick, Dworkin and Rawls has been, and that he presents himself as more radically egalitarian than Rawls, and that his turn to normative political philosophy was originally motivated by a belief that leftists need to be clearer about what we seek and why we are justified in seeking it, Cohen's positive contribution to the question of what type of society we ought to seek should be clarified and evaluated.

2. Value pluralism, fundamental principles and rules of regulation

2.1. In clarifying and evaluating Cohen's positive contribution to the question of what type of society we ought to seek, his methodological approach to normative political philosophy is of central importance. As a student of Berlin, Cohen is clearly influenced by his teacher's understanding of the relationship between different values – justice, liberty, equality, community, and so on. In his essay, "The Hedgehog and the Fox," Berlin opens with a quote from the Greek poet Archilochus: "The fox knows many things, but the hedgehog knows one big thing." He then uses this line of poetry to draw a distinction between two types of thinkers. On the one hand, there are hedgehogs, 'who relate everything to a

⁵ In *Democratic Equality: What Went Wrong?*, ed. Edward Broadbent, Toronto: University of Toronto Press.

single central vision, one system, less or more coherent or articulate, in terms of which they understand think and feel' (Berlin, 2013, p. 2). On the other hand, there are foxes, whose 'thought is scattered or diffused, moving on many levels, seizing upon the essence of a vast variety of experiences and objects for what they are in themselves, without, consciously or unconsciously, seeking to fit them into, or exclude them from, any one unchanging, all-embracing, sometimes self-contradictory and incomplete, at times fanatical, unitary vision' (Berlin, 2013, p. 2).

As regards the relationship between values, then, hedgehogs believe in the unity of value and/or that values are reducible to one master value, such as well-being. Recently, the unity of value has been defended by Dworkin in his *Justice for Hedgehogs*, for he believes '[t]he truth about living well and being good and what is wonderful is not only coherent but mutually supporting; what we think about any one of these must stand up, eventually, to any argument we find compelling about the rest' (Dworkin, 2011, p. 1). In contrast, foxes believe in a plurality of conflicting values, with the consequence that the realization of a value or values will often regrettably necessitate sacrificing and/or compromising another value or values. Berlin embraces such competitive value pluralism, for he insists in "Two Concepts of Liberty" that 'not all good things are compatible, still less all the ideals of mankind... [E]mpirical observation and ordinary human knowledge... give us no warrant for supposing... that all good things, or all bad things for that matter, are reconcilable with each other. The world that we encounter in ordinary experience is one in which we are faced with choices between ends equally ultimate, and claims equally absolute, the realization of

some of which must inevitably involve the sacrifice of others' (Berlin, 2002, pp. 213-214).

Cohen defends value pluralism in one of his earliest papers, "A Note on Values and Sacrifices," arguing that Berlin 'succeeded in showing that plain consideration of plain facts of experience reveals how shallow and self-deceptive this optimism [about the unity of value] is' (Cohen, 1969, p. 159). 22 years later, in "Isaiah's Marx, and Mine,"⁶ his position remains unchanged, for he there reiterates his 'agree[ment] with Isaiah that significant values are seriously incompatible' (Cohen, 2013a, p. 12). And, in quoting "Two Concepts of Liberty," insists that 'we must reject the "ancient faith... that all the positive values in which men have believed must, in the end, be compatible"'⁷ (Cohen, 2013a, p. 12). Another 17 years later in *Rescuing Justice and Equality*, the 2008 definitive presentation of his critique of Rawls, Cohen's belief in value pluralism remains intact.⁸ For he says in its introduction: 'I am an Oxford man (of a certain [fox like] vintage)... We expect to find... that the normative requirements that we recognize present themselves in competitive array: they cannot all be satisfied all the time, nor do we have a method for systematically combining them. Discursively indefensible trade-offs are our fate' (Cohen, 2008, pp. 3-4).

A difficulty for value pluralism is that the irreducibility of values to a master value appears to imply incommensurability, for it suggests there is no

⁶ Originally published in: *Isaiah Berlin: A Celebration*, ed. Avishai Margalit and Edna Ullmann-Margalit, Chicago: University of Chicago Press, 1991.

⁷ See Berlin, 2002, p. 212

⁸ *Rescuing* Chapters 1-3 and Chapter 6 were previously published as (in chapter order): Cohen, G. A. (1992), "Incentives, Inequality and Community," in *The Tanner Lectures on Human Values*, ed. G. Peterson, Salt Lake City: University of Utah Press; Cohen, G. A. (1995), "The Pareto Argument for Inequality," *Social Philosophy and Policy*, 12: pp. 160-185; Cohen, G. A. (1997), "Where the action is: On the Site of Distributive Justice," *Philosophy and Public Affairs*, 26: pp. 3-30 (also reprinted in, Cohen, 2000); Cohen, G. A. (2003), "Facts and Principles," *Philosophy and Public Affairs*, 31: pp. 211-245.

common standard against which conflicting values can be measured when deciding which are of greater importance, and therefore when deciding which ought to be sacrificed and/or compromised in the name of realizing others. However, many value pluralists respond to this difficulty with an appeal to rationality as a means for deciding what trade-offs to make. For example, with respect to the incommensurability of liberty and equality, Bernard Williams argues that ‘no one could believe [the implication ‘that there is no way of comparing or adjudicating the claims of these values *wherever* they conflict’], since obviously there are possible changes by which (say) such a trivial gain in equality was brought by such an enormous sacrifice of liberty that no one who believed in liberty at all could rationally favour it’ (Williams, 1981, p. 77). Despite Cohen’s references to ‘intuitive balancing’ and ‘intuitive trade-offs,’ as opposed to rational balancing or rational trade-offs, his remarks about people making choices in practice based on knowledge of what they know or believe to be good without incommensurability paralyzing them, suggests that he also views rationality as (at least part of) the solution (Cohen, 2008, pp. 5-6). So understood, Cohenite intuitive trade-offs are (at least sometimes) a rational process.

2.2. When clarifying Cohen’s positive contribution to the question of what type of society we ought to seek, it is of the utmost importance to keep in mind his value pluralism, because when he makes claims of the sort, ‘the realization of value x requires the realization of social state of affairs a ,’ he is not claiming that social state of affairs a is what we ought to seek all things considered. For the

realization of value y , if it conflicts with value x and x does not always trump y , will regrettably necessitate sacrificing and/or compromising value x , so that (rationally) we ought to instead seek the realization of social state of affairs b , which reflects the trade-off between values x and y .

Particularly important in this regard is Cohen's conception of distributive justice. Throughout his critique of Dworkin and Rawls we find claims of the sort, 'the realization of distributive justice requires the realization of egalitarian social state of affairs e .' Yet, because Cohen views distributive justice as one value amongst a plurality of conflicting values, it will, in all probability, have to be compromised in the name of realizing or partly realizing other important values. The social state of affairs Cohen believes distributively just is not, then, the type of society he believes we ought to seek all things considered. This is evident in the fact that he draws a distinction between fundamental principles of justice and rules of regulation that ought to govern society.

According to Cohen, a fundamental principle reflects nothing but considerations pertaining to the relevant value. A fundamental principle of *justice* thus reflects: 'nothing but considerations of justice, or nothing but considerations that are not considerations of justice [a derivative principle that is nevertheless fundamental as regards justice], but they may not reflect a mixture of justice considerations and other considerations, for principles that reflect such a mixture are applied principles of justice' (Cohen, 2008, p. 280). Furthermore, a fundamental principle is fact-insensitive, for 'a principle can respond to (that is, be grounded in) a fact only because it is also a response to a more ultimate principle that is not a response to a fact: accordingly, if principles respond to

facts, then the principles at the summit of our convictions are grounded in no facts whatsoever' (Cohen, 2008, p. 229). Indeed, Cohen claims that a regression in which only fact-sensitive principles are identified cannot go on infinitely, and challenges his reader to undertake a regression that can go beyond five principles before reaching one that is fact-insensitive (Cohen, 2008, p. 237). A fundamental principle of justice is therefore said to be 'in no way dependent on the character of any facts, or... on any considerations of value or principle that are not considerations of justice' (Cohen, 2008, p. 281). On the other hand, 'rules of regulation' for the governing of society, 'whether they be those rules that obtain by order of the state or those that emerge within the milder order of social norm formation' (Cohen, 2008, p. 276), 'will reflect both values other than justice and practical constraints'⁹ that restrict the extent to which justice can be applied' (Cohen, 2008, p. 3).

This distinction between fundamental principles of justice and rules of regulation informs a threefold distinction Cohen draws in his essay, "How to Do Political Philosophy." Here, Cohen distinguishes between the political philosophical questions:

(i) What is justice?; (ii) What should the state do?; and (iii) Which social states of affairs ought to be brought about? ...

[Q]uestion (i) is not the same question as question (ii), if only because not everything that the state should do is something it should do in the service of justice..., [and because] the very

⁹ Cohen more often refers to practical constraints as 'social facts.'

concept of justice does not ensure that all justice is to be achieved by the state. Question (ii) is not, moreover, the same as question (iii), if only because question (ii) places a restriction, and question (iii) does not, on the agency whereby whatever is to be brought about is to be brought about. And finally question (iii) is not the same as question (i), since justice is not the only reason why it might be right to bring about this social state of affairs rather than that one. Social states of affairs can have, and lack, virtues other than that of justice.

(Cohen, 2011h, p. 227)

The distinction between fundamental principles of justice and rules of regulation corresponds with these questions. Whatever the correct principles of justice are, they are the answer to question (i); whatever the correct *state* rules of regulation are, they are the answer to question (ii); and, because social states of affairs can be brought about not only by state agency but also by or in combination with non-state agency, whatever the correct *state and non-state* rules of regulation are, they are the answer to question (iii). As my aim is to clarify and evaluate Cohen's positive contribution to the question of what type of society we ought to seek, I am primarily operating in the realm of question (iii). But question (iii) is not wholly independent of questions (i) and (ii), because the answer to question (iii) incorporates the answer to question (ii), and unless justice is completely sacrificed to the demands of competing values and social facts when developing rules of regulation, the answers to both questions (ii) and

(iii) will to some extent reflect the answer to question (i). I am thus concerned with all three questions, as each is relevant to my objective, but I am primarily concerned with question (iii).

A problem, however, is that Cohen's contribution to normative political philosophy is largely devoted to tackling question (i), and not questions (ii) and (iii). As noted in section 1, a positive view of what type of society we ought to seek is not clearly set out by Cohen. There is, however, sufficient textual evidence as to how he understands: the value of equality of opportunity; the relationship between equality of opportunity, Pareto-efficiency and freedom of occupational choice in principle; the relationship between equality of opportunity and Pareto-efficiency in practice; and the relationship between equality of opportunity and community in principle. No doubt there is a plurality of other values and social facts that need to be considered in developing a *complete* answer to the question of what type of society we ought to seek. But what Cohen has to say about these desiderata in both principle and practice does amount to an *incomplete* positive contribution to the question of what type of society we ought to seek, which, I clarify and evaluate in the chapters to follow.

3. Writings not examined

3.1. As to whether we ought to be Cohenite value pluralists, Dworkinian monists, Rawlsian contractualists, or employ some alternative methodology when doing normative political philosophy, and whether fundamental principles are fact-insensitive whilst reflecting considerations pertaining only to the relevant value, I remain silent throughout. For my concern is largely practical, and so I wish to

avoid getting bogged down in deep and difficult issues concerning moral epistemology; although I recognize that one's methodology may affect the kind of justification one gives as to what type of society we ought to seek. I do not therefore evaluate Cohen's critique of contractualist approaches to justice, which is based on his claims about fundamental principles, in *Rescuing Part II*.¹⁰ Another two areas of Cohen's normative writings I do not examine are his critical engagement with Nozick, as definitively presented in *Self-ownership*, and his debate with Andrew Williams on publicity, which also features in *Rescuing part II*.

3.2. Before I explain why I do not evaluate Cohen's critical engagement with Nozick, let me explain one of the critique's installments. As Cohen argues, central to Nozickian justice is not liberty but rather *the self-ownership principle*. This principle says 'that each person is the morally rightful owner of h[er] own person and powers' (Cohen, 1995, p. 67). More specifically, Nozick's entitlement based theory rests on deriving almost unrestricted property rights from the self-ownership principle; the rationale being that if each person is the morally rightful owner of her own person and powers, then by extension each person is the morally rightful owner of whatever she produces with the use of her person and powers, such that coercive redistributive taxation of whatever she produces appears to violate her self-ownership. Yet, market exchanges involve not only the exercise of self-owned powers, but also the ownership and transfer of the material world. The self-ownership principle does not therefore alone

¹⁰ See section 4.3

generate almost unrestricted property rights, but must be combined with a satisfactory account of how people can come to have almost unrestricted property rights over impersonal resources.

According to Nozick, any *voluntary transfer* of resources is legitimate when the resources being transferred are legitimately owned by the seller or giver. Since legitimate ownership of impersonal resources depends not only on how their current owner came to have them, but on how others before her came to have them – for at some point they might have been (and considering the history of our world in all probability were) illegitimately acquired by force – the legitimacy of any transfer, on Nozick's view, is dependent on a historical chain of legitimate ownership that begins at the point where people first began to claim ownership rights over an initially unowned material world. Nozick must therefore provide a satisfactory account of legitimate *initial acquisition* of the material world. If he does not, then, he consequently fails to provide a satisfactory account of how people can come to have almost unrestricted property rights over the material world in the present, which, as noted above, is necessary because the self-ownership principle alone does not.

A particularly important part of Cohen's strategy in *Self-ownership* is to demonstrate Nozick's failure in this regard. According to Nozick, '[a] process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened' (Nozick, 1974, p. 178). In other words, Nozick claims that an initial acquisition of the unowned material world is legitimate *when B is no worse off following A's acquisition than she was prior to it*. The

italicized caveat is known as *the Lockean proviso* (although it does not accurately reflect John Locke's view¹¹), which, due to the inefficiency of an unowned material world as compared with a system of private property, is easily satisfied.

However, we should not accept satisfaction of Nozick's proviso as proof of legitimate initial acquisition, as it involves an arbitrary narrowing of options. As Cohen argues, '[i]t has the upshot that... *the only counterfactual situation relevant to assessing the justice of an appropriation is one in which O* [the appropriated object] *would have continued to be accessible to all...* [But] there are other intuitively relevant counterfactuals... [And these demonstrate that] Nozick's proviso is too lax, that he has arbitrarily narrowed the class of alternatives with which we are to compare what happens when an appropriation occurs with a view to determining whether anyone is harmed by it' (Cohen, 1995, p. 78).

For example, imagine that *A* appropriates all available farm land and *B*, not having any land to farm, is forced to sell her labor-power to *A*. But 'suppose that *B* is a much better organizer than *A* so that, had *B* appropriated, then each of *A* and *B* would have had more wheat than [s]he does in the actual situation. Nozick's proviso is, nevertheless, satisfied, since whether or not it is satisfied is unaffected by anything that might have happened had *B* appropriated. And this means that Nozick's condition licenses, and protects, appropriations whose upshots make each person worse off than [s]he need be' (Cohen, 1995, p. 81). In addition to Pareto-efficient possible alternatives such as this, 'we should also consider not only what would have happened had *B* appropriated, but also what

¹¹ See Cohen, 1995, pp. 77-78

would have happened had *A* and *B* cooperated under a socialist economic constitution' (Cohen, 1995, p. 87).

In short, there is a variety of alternative possible states of affairs that must be considered in assessing whether people are made worse off following initial acquisitions, as opposed to merely their situation prior to it. Amongst which, there will almost certainly be an alternative where some do better than they would following up-for-grabs initial acquisitions over which the appropriators have almost unrestricted property rights. Thus, Nozick fails to provide a satisfactory account of legitimate initial acquisition of the material world, which is necessary to generate almost unrestricted property rights in the present, because the self-ownership principle alone does not.

Why, then, do I not evaluate Cohen's critical engagement with Nozick? With respect to Cohen's positive contribution to the question of what type of society we ought to seek, there is little to be gained from evaluation of the above argument. For as Will Kymlicka says, in light of Cohen's critique and various alternative models of initial acquisition, including left-libertarian models that attempt to combine the self-ownership principle with some type of egalitarian principle, 'virtually no one thinks that a plausible test of fair acquisition would generate Nozick's view that people can appropriate unrestricted property rights over unequal amounts of resources' (Kymlicka, 2002, p. 120).¹²

Of course, Cohen's critique of Nozick in the earlier chapters of *Self-ownership* leads him to pursue other lines of inquiry that one might think relevant to my subject matter. Specifically, Cohen goes on to argue: (i) that the

¹² For a bibliography of models of initial acquisition, see Kymlicka, 2002, p. 162, n. 11.

classical Marxist condemnation of capitalist exploitation involves a latent appeal to self-ownership, which is problematic because a commitment to self-ownership prevents Marxists from being able to claim that ‘cleanly generated capitalist relationships’ are exploitative¹³; and (ii) that we ought to reject not only Nozick’s extension of the self-ownership principle to almost unrestricted property rights, but the self-ownership principle itself.

Argument (i) I consider irrelevant to my subject matter. For my concern is with clarifying and evaluating Cohen’s positive contribution to the question of what type of society we ought to seek *following his turn from Marxism to normative political philosophy*, and not with whether or not classical Marxists are unknowingly committed to the self-ownership principle. Argument (ii) might be thought relevant because if Cohen is wrong, as left-libertarians would argue, and we ought to embrace the self-ownership principle, doing so may place constraints on the extent to which Cohen’s normative conclusions can rightfully be pursued.¹⁴ It is, however, as Cohen argues, ‘a considerable objection to the thesis of self-ownership that no one should fare worse than others do because of bad brute luck, for no luck is bruter than that of how one is born, raised and circumstanced, the good and bad results of which adhere firmly to individuals under the self-ownership principle’ (Cohen, 1995, p. 229). Anyone who recognizes this, which is to say, anyone who recognizes the injustice of some doing better than others as a result of circumstances for which neither they nor the worse-off can be held personally responsible, as do Rawls and Dworkin, has reason to at least doubt the self-ownership principle. Moreover, as Cohen argues,

¹³ For clarification on this point, see Cohen, 1995, pp. 161-162.

¹⁴ For an overview of left-libertarianism, see Vallentyne and Steiner, 2000.

by distinguishing the thesis of self-ownership from the conditions of not being a slave, possessing autonomy, and not being used merely as a means, the self-ownership principle can be rejected without the implausible consequences libertarians associate with its denial (Cohen, 1995, pp. 230-243). In clarifying and evaluating Cohen's positive contribution to the question of what type of society we ought to seek, I therefore choose to concentrate on his more contentious views that arise from his critical engagement with Dworkin and Rawls, and from his positive vision of society as set out in *Why Not Socialism?*

3.3. The catalyst for the debate between Cohen and Williams on publicity is an installment of Cohen's critique of Rawls, which I discuss in greater detail in Chapter 2, where Cohen argues that principles of distributive justice ought to shape not only coercive rules but also an ethos that informs people's choices within coercive rules.¹⁵ As Cohen recognizes, Rawlsians will likely respond to his claim that principles of distributive justice ought to inform people's everyday choices by pressing *the basic structure objection*. According to this objection, the choices people make within coercive rules are irrelevant from the perspective of Rawlsian justice, because Rawls is commonly interpreted as intending his principles to regulate *the basic structure* of society, understood as its political constitution and principal social and economic arrangements.

Cohen's 'fundamental' reply to the basic structure objection is that Rawls deems the basic structure to be of primary importance because of its ability to produce deep inequalities for which people cannot be held personally

¹⁵ See Chapter 2, section 2.4

responsible. And yet, the choices people make within coercive rules, particularly within the family and the market¹⁶, can likewise result in pervasive and morally arbitrary inequalities. He therefore claims that Rawls ‘must either admit application of the principles of justice to... patterns of personal choice that are not legally prescribed..., or, if he restricts his concern to the coercive structure only, then he saddles himself with a purely arbitrary delineation of his subject matter’ (Cohen, 2008, p. 137).

In defence of Rawls, Williams draws on textual evidence that suggests he understands principles of justice as having to be publicly verifiable, so that ‘individuals are able to attain common knowledge of the rules’ (i) general applicability, (ii) their particular requirements, and (iii) the extent to which individuals conform with those requirements’ (Williams, 1998, p. 233). Therefore, Rawlsian ‘principles are inapplicable to certain types of decision. For some choices, although they may be profoundly influential, cannot be regarded as according with, or violating, public rules’ (Williams, 1998, p. 234). In other words, Cohen argues that principles of distributive justice ought to shape an ethos that informs people’s choices within coercive rules, yet for some of these choices people’s conformity to the ethos cannot be publicly verified. This is important to Rawls, and in truth, so Williams argues, because publicity is ‘instrumentally valuable insofar as [it] enhance[s] the long-term probability of a society conforming with its conception of justice’ (Williams, 1998, p. 244). For if individuals cannot verify that others are conforming to the principles of justice, they might refuse to conform themselves, so that social stability comes under

¹⁶ See Chapter 2, section 2.4

threat. Williams's *revised basic structure objection* therefore holds that publicity is rightly a constraint on the content of distributive justice, so that Rawlsian justice does not involve an arbitrary delineation of its subject matter.

Cohen's response, in the final chapter of *Rescuing*, is that the ability to attain common knowledge of the extent to which people conform to principles 'is an absurdly strong requirement on principles of justice' (Cohen, 2008, p. 347). For if the relevant concern is the possibility of people refusing to conform to principles of distributive justice unless they know others too are conforming, and therefore with a threat to social stability, 'knowledge of widespread good faith effort by individuals at large should surely suffice, even if one not only... cannot... [(iii)] sort out the great majority of good-faith-effort makers from a minority of backsliders, but also cannot [(ii)] be sure precisely what the implications of the rules are for particular situations' (Cohen, 2008, p. 352). Cohen therefore rejects Williams's publicity conditions (iii) and (ii) as being constraints on the content of distributive justice.

Williams refers to Cohen's response as *the alien factors reply*, in the sense that it deems publicity to fall outside of Cohenite parameters for a fundamental principle of justice. That being the case, he argues that Cohen is guilty of talking at cross purposes with Rawls, because Rawls 'does not aim to identify first principles of justice in Cohen's robust and pure sense..., [and any proponent] of the revised basic structure objection can undermine the alien factors reply by appealing to this conclusion' (Williams, 2008a, p. 490).

My reason for not evaluating this debate is that it falls outside of my aim to clarify and evaluate Cohen's positive contribution to the question of what type

of society we ought to seek. As noted toward the end of section 2.2, although there is insufficient evidence to infer from Cohen's writings a *complete* answer to this question, what he has to say about equality of opportunity, Pareto-efficiency, freedom of occupational choice, and community does amount to an *incomplete* positive contribution to the question of what type of society we ought to seek. But Cohen does not reflect on the value of publicity in the relevant context. Rather, his thoughts about publicity are limited to a denial of it being a constraint on the content of distributive justice.¹⁷ Thus, although publicity may be an important desideratum when developing a complete answer to the question of what type of society we ought to seek, it is not relevant to my task, which is to clarify and evaluate Cohen's positive, but incomplete, contribution to answering that question.

4. Thesis Summary

4.1. Amongst Cohen's normative political philosophical writings, the primary texts for clarifying and evaluating his positive contribution to the question of what type of society we ought to seek are: his 1989 essay, *On the Currency of Egalitarian Justice* and related follow-up essays on luck egalitarianism; *Rescuing* Part I and a section on justice and Pareto-efficiency in *Rescuing* Part II; and *Why Not Socialism?* In this summary I explain why these writings are of primary importance to my task, the four views I identify and clarify as Cohen's positive contribution, and the conclusions I reach from evaluating them.

¹⁷ At one point Cohen says, 'publicity is *at most* a desideratum of the rules regulating society' (Cohen, 2008, p. 22). But this remark does not demonstrate any deep reflection on Cohen's part as to whether publicity ought to be a desideratum of rules of regulation; it is merely illustrative of his rejection of publicity as a constraint on the content of distributive justice.

4.2. As is explicit in Cohen's argument for the need to turn away from Marxism, and in his positive vision of society as outlined in *Why Not Socialism?*, since it reflects a principle of equality of opportunity, equality is the central value of Cohen's normative political philosophical writings. Yet because *Why Not Socialism?* is only a short exploratory essay, Cohen does not there explain or defend his preferred principle of equality of opportunity in any great detail. In *Currency* and its related essays, however, Cohen defends a specific principle of equality of opportunity at length. These essays comprise his critical engagement with Dworkin on the subject of what is the appropriate metric of egalitarian interpersonal comparison. By way of criticizing Dworkin's *equality of resources* and Richard Arneson's originally favored *equal opportunity for welfare*, Cohen comes to embrace a hybrid metric of equality of opportunity that he names *equal access to advantage*. Through careful examination of these essays the principle of equality of opportunity that is constitutive of Cohen's positive vision of society can therefore be clarified, prior to evaluating whether we ought to embrace it or some alternative, and how Cohen understands: the relationship between equality of opportunity, Pareto-efficiency and freedom of occupational choice in principle; the relationship between equality of opportunity and Pareto-efficiency in practice; and the relationship between equality of opportunity and community in principle.

In Chapter 1 I argue that we ought not to embrace equal access to advantage as the appropriate metric of egalitarian interpersonal comparison. Roughly speaking, Dworkin and Cohen are both luck-egalitarians: each roughly believes that, all else being equal, inequalities that result from brute luck are

prima facie unjust because the bearer cannot be held personally responsible for her relative disadvantage, whereas inequalities that result from voluntary choice on the part of the bearer are *prima facie* just because she can, in virtue of that choice, be held personally responsible for her relative disadvantage. But whereas Dworkin elaborates and defends equality of impersonal and personal resources understood as external goods and people's physical and mental abilities, Cohen seeks to equalize unjust inequalities of advantage specified as some set of desirable states of the person that one has access to in light of her resources, welfare and perhaps other things.

Cohen favors equal access to advantage over equal opportunity for welfare and equality of resources because he thinks that it, as opposed to those alternatives, correctly answers compensation claims for physical impairments and expensive tastes (preferences that require more resources to satisfy but when satisfied provide the bearer with equal welfare to those with less expensive tastes). Contra Cohen, I argue that equality of resources answers these claims for compensation correctly, and that equal access to advantage is susceptible to *the problem of indexing, the problem of perfectionism, and the problem of expensive tastes*.

To equalize advantage specified as some set of desirable states of the person that one has access to in light of her resources, welfare and perhaps other things, requires the creation of an index of those valuable states of the person and their relative worth so that an access to advantage score can be summed for each individual and compared against the scores of others. If a subjective theory of value is adopted this will prove difficult, as the number of valuable states of the

person will be extensive whilst their value will differ, sometimes greatly, between individuals. Add to this the fact that acquiring the necessary information with respect to people's value judgments is unfeasible, and the creation of the required index appears implausible.

To create an index that specifies what states of the person are valuable and their relative worth Cohen would have to adopt an objective theory of value. But if that objective theory of value is derived from a perfectionist theory of the good-life, equal access to advantage will be susceptible to the problem of perfectionism. Equalizing for a list of objectively valuable states of the person whose value is derived from a perfectionist theory of the good-life conflicts with justificatory neutrality (the view that government should not act in order to help some ways of life over others), because the list being equalized for cannot be justified over some other list without appeal to the relevant perfectionist theory. If Cohen wishes for the state to maintain justificatory neutrality he must therefore provide a non-perfectionist explanation of from where a list of states of the person derives its objective value, which he does not.

The problem of indexing and the problem of perfectionism aside, equal access to advantage counterintuitively compensates for expensive tastes when claimants fail *the continuity test*; a Dworkinian desideratum of egalitarian interpersonal comparison, as interpreted by Matthew Clayton and Andrew Williams, whereby compensation is granted only if the claimant is able to claim in good-faith that relevant others are better off in terms of opportunities consistent with her beliefs as to what makes for a valuable life.

4.3. Evidence of how Cohen understands the relationship between equality of opportunity, Pareto-efficiency and freedom of occupational choice in principle, and between equality of opportunity and Pareto-efficiency in practice, is to be found in *Rescuing* Part I and a section on justice and Pareto-efficiency in *Rescuing* Part II.

Rescuing Part I is primarily devoted to challenging *the incentives argument* for inequality. According to the incentives argument, inequalities are unjust unless they are necessary to make the worst-off better off, but, so the argument goes, unequalizing incentive payments to productively talented people *are* necessary to make the worst-off better off, and so they are just; the rationale being that unequalizing incentive payments result in greater productivity and thus a greater sum total of resources, which allows for greater absolute amounts to be distributed to the worst-off. Cohen criticizes the incentives argument on grounds that unequalizing incentives are relevantly necessary only because the productively talented make them necessary by choosing to vary their productivity relative to their reward. He deems this an attempt to rescue equality from Rawls because *the difference principle* is commonly thought to permit unequalising incentive payments.

Rescuing Part II, on the other hand, criticizes contractualist approaches to justice. Once again Rawls is the prime target, for in deriving principles of justice from what hypothetical contractors would supposedly agree to in *the original position*¹⁸, Rawlsian principles of justice inevitably reflect considerations pertaining to a plurality of values and social facts. Thus, in drawing on his

¹⁸ For clarification see Rawls, 1999; Rawls, 2001.

distinction between fundamental principles of justice and rules of regulation, Cohen argues that Rawls provides us with a theory of the latter rather than of the former, and so looks to rescue justice from Rawls by revealing this supposed truth.

The success or failure of either rescue attempt is not especially relevant to my task. My primary concern is not with whether unequalizing incentive payments are just or with how we ought to conceptualize justice; much has already been written on this, predominantly in defence of Rawls.¹⁹ Rather, my concern is with what type of society we ought to seek, which for Cohen, because of his value pluralism, is distinct from what type of society is just. And, through careful examination of *Rescuing* Part I and the relevant section from Part II, it becomes evident that Cohen ultimately believes the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency.

In developing his critique of the incentives argument, Cohen presses the claim, which operates at the level of fundamental principle and so abstracts from social facts, that equality of opportunity and Pareto-efficiency are co-obtainable if and when the productively talented voluntarily choose to work at their utmost capacity for reward consistent with equality of opportunity. *The freedom objection* to this claim of Cohen's is that even granting its truth, Cohen nevertheless faces *the equality-Pareto-freedom trilemma*: any two of equality of opportunity, Pareto-efficiency and freedom of occupational choice may co-obtain, but all three cannot, as to fill occupations Pareto-efficiently whilst realizing equality of opportunity would require forcing people who prefer

¹⁹ See (for example) Arneson, 2008; Cureton, 2015; Estlund, 1998; Kofman, 2012; Pogge, 2000 & 2008; Quong, 2010; Rondel, 2012; Scheffler, 2006; Tomlin, 2010; Williams, 1998 & 2008a; and Ypi, 2012.

different occupations for reward consistent with equality of opportunity to fill those occupations on which the realization of Pareto-efficiency depends; note that, absent freedom of occupational choice, for equality of opportunity and Pareto-efficiency to co-obtain it still requires people to produce Pareto-efficiently, but that it leaves open the possibility of forcing them to.

Cohen's *ethical solution* to the trilemma holds that all three desiderata are co-obtainable in principle when people's occupational choices are informed by a commitment to equality of opportunity in combination with a commitment to produce Pareto-efficiently both in terms of productive capacity and occupational choice. In principle, then, Cohen maintains that equality of opportunity, Pareto-efficiency and freedom of occupational choice are co-obtainable when the choices of the productively talented are informed by an egalitarian-Paretian ethos.

As my concern is with what type of society we ought to seek, I am more concerned with what we ought to do in practice than with what is possible in principle. In Chapter 2 I therefore evaluate whether the ethical solution succeeds not only when we abstract from social facts, but also when we recognize those social facts that are particularly relevant. As Cohen allows for a prerogative to pursue self-interest to a reasonable extent, which effectively allows many to depart from the egalitarian-Paretian ethos on which the ethical solution relies, I argue that the ethical solution succeeds only if either (i) we deny the prerogative or (ii) people do not exercise it with respect to occupational choice. Cohen is against (i) and so, on his view, the ethical solution succeeds only if (ii). But the probability that (ii) will not occur, that many will exercise their prerogative with

respect to their choices about how hard to work and what occupations to fill, has the consequence that we must choose between either the sacrificing or compromising of equality of opportunity, Pareto-efficiency, or freedom of occupational choice.

Although the failure of the ethical solution in practice is no critique of Cohen, because he intends it to operate at the level of fundamental principles where we abstract from social facts, it is important to clarify that, in practice, the type of society we ought to seek when taking into account considerations pertaining to equality of opportunity, Pareto-efficiency and freedom of occupational choice does require either the denial of freedom of occupational choice or at least one of equality of opportunity or Pareto-efficiency to be sacrificed or compromised.

Despite my concerns being largely practical I additionally note that even at the level of fundamental principle, the success of the ethical solution depends on whether the egalitarian-Paretian ethos is a requirement of distributive justice and on how we conceptualize freedom. For as Paula Casal argues, on a positive conception of freedom, where freedom of occupational choice requires an adequate range of acceptable options, and the egalitarian-Paretian ethos is, as Cohen argues, a requirement of distributive justice, the ethical solution fails because one is not relevantly free when their occupational choices are limited to two options and one of them is unjust.

4.4. Chapter 2 reveals that when we do not abstract from the relevant social facts, we must choose between either sacrificing or compromising equality of

opportunity, Pareto-efficiency or freedom of occupational choice. In Chapter 3 I therefore move to consider which of the desiderata ought to be sacrificed or compromised. Particularly relevant in this respect is Cohen's concession in *Rescuing* Part I, and which he expands on in a section on justice and Pareto-efficiency in *Rescuing* Part II, that Pareto-efficiency often trumps egalitarian justice when developing *state* rules of regulation.²⁰

Being a concession rather than a fully developed view, Cohen's view that, in practice, the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency, is somewhat open to interpretation. I argue that Cohen is best interpreted here as embracing a pluralist distributive ethic that combines telic egalitarian and telic prioritarian beliefs.²¹ It says that a luck egalitarian social state of affairs – because fair – has non-instrumental value, but that the state should often pursue Pareto-efficiency over a luck egalitarian principle of equality of opportunity because a social state of affairs in which people, and particularly the worst-off, enjoy greater benefits is non-instrumentally more valuable than egalitarian justice.

Unlike the largely critical chapters 1, 2 and 4, in Chapter 3 I defend Cohen's egalitarian-prioritarian ethic from two objections. As the ethic is a combination of telic egalitarian and telic prioritarian beliefs it faces objections from either side of the debate as to whether we ought to embrace egalitarianism, prioritarianism or an alternative distributive ethic. The most prominent of these objections are *the levelling down objection* to telic egalitarianism and *the Otsuka-Voorhoeve objection* to prioritarianism.

²⁰ For clarification re *state* rules of regulation, see section 2.2.

²¹ For clarification of the distinctions between egalitarianism and prioritarianism, and between telic and deontic variants of egalitarianism and prioritarianism, see Chapter 3 section 2.2.

The levelling down objection is meant to reveal the implausibility of claiming that equality has non-instrumental value and thus the implausibility of telic egalitarianism. The objection holds that, to believe an egalitarian state of affairs has non-instrumental value is to believe that its realization by making everyone as badly off as the worst-off is *in one way* better than the relevant inequality, which, so the objection goes, is implausible because a state of affairs is not *in any way* better than another state of affairs when it is better for no one. Thus, equality does not have non-instrumental value. If the objection succeeds the telic egalitarian component of Cohen's egalitarian-prioritarian ethic is implausible. I argue, however, that despite its force the levelling down objection is not decisive.

The objection rests on *the person-affecting claim*, which holds that states of affairs cannot be *in any way* better or worse than another when there are *no persons* for whom it affects for better or worse. Yet, as Larry Temkin argues, there are states of affairs that when realized reflect certain values and which we tend to believe are *in one way* better than relevant alternatives even when they are better for no one. For example, if *A* represents people who live ethically whereas *B* represents mass murders, we tend to believe state of affairs *x*: *A* 8, *B* 2, is *in one way* better than state of affairs *y*: *A* 8, *B* 10, even though state of affairs *x* is better for no one. The person-affecting claim may therefore be false. If it is, and if equality of opportunity has non-person-affecting value in the sense that desert appears to have non-person-affecting value above, that is, if there is *something* morally good about a state of affairs where everyone is as badly off as the worst-off as compared with a state of affairs where some are better off merely

as a consequence of brute luck, then, telic luck egalitarianism escapes the levelling down objection. My intuition is that there is something morally good about it, and that something is *fairness*. Thus, I share Temkin and Cohen's view that, although we ought not to level down, a luck egalitarian social state of affairs – because fair – has non-instrumental value and thus is in *one way better* than the unequal alternative even when it is better for no one. The force of the levelling down does not therefore, at least in my view, show the telic egalitarian component of Cohen's egalitarian-prioritarian ethic to be implausible.

The Otsuka-Voorhoeve objection to prioritarianism rests on the claim that there is greater priority to benefit the badly-off when we move from intrapersonal to interpersonal cases, and that whereas prioritarianism cannot explain this shift in weighting, it can be explained by telic and/or deontic egalitarian considerations that are present only in interpersonal cases (e.g., the non-instrumental value of equality and/or the comparative strength of different people's claims to benefit). The upshot, so Michael Otsuka and Alex Voorhoeve argue, is that prioritarianism is implausible. If they are right, so is the telic prioritarian component of Cohen's egalitarian-prioritarian ethic.

In defence of Cohen, however, I embrace Martin O'Neill's pluralist response to the Otsuka-Voorhoeve objection, which says that it shows prioritarianism to be incomplete rather than implausible. For it is open to any prioritarian, unless she dogmatically believes the priority view accounts for the whole truth about distributive ethics, to explain the shift in weighting between intrapersonal and interpersonal cases by appeal to egalitarian considerations. Consequently, the telic prioritarian component of Cohen's egalitarian-prioritarian

ethic is not implausible. And, unlike *non-restricted* pure prioritarianism²², it can explain the greater priority to benefit the badly-off in interpersonal cases by appeal to the non-instrumental value of equality of opportunity.

4.5. *Why Not Socialism?* is of course relevant to my clarificatory and evaluative objectives because, rather than merely engage in critique of other philosophers, Cohen here outlines a positive vision of society that reflects a principle of equality of opportunity and a principle of community. As noted previously, because of its limited detail, clarification and evaluation of Cohen's principle of equality of opportunity is done through careful examination of the substantially more detailed *Currency* and related essays on luck egalitarianism in Chapter 1. *Why Not Socialism?* remains particularly relevant to my objectives, however, because of what Cohen says here about the relationship between equality and community.

As noted in section 4.2, Cohen is a luck egalitarian and so his principle of equality of opportunity does not object to inequalities that result from voluntary choice on the part of the bearer, because she can, in virtue of that choice, be held personally responsible for her relative disadvantage. But in *Why Not Socialism?* Cohen argues that when inequalities of this sort obtain on a sufficiently large scale they undermine community, and ought therefore to be tempered by a principle of community. As I interpret *the community principle*, it tempers luck egalitarianism by keeping the inequalities it permits within a range that ensures people's lives, where possible, labor under similar challenges as a result, where

²² Andrew Williams's *deontic-restricted* prioritarianism is not susceptible to the Otsuka-Voorhoeve objection, and therefore need not appeal to egalitarian considerations to explain the shift. See Chapter 3, section 4.2

necessary, of the better-off voluntarily helping the worse-off. In principle, Cohen therefore believes that equality of opportunity ought to be constrained by a principle of community that is realized by means of voluntary non-state agency. That is to say, in principle, Cohen embraces a community-constrained luck egalitarianism.

Evaluation of Cohen's community-constrained luck egalitarianism requires an assessment of whether we ought to forbid large inequalities permitted by a luck egalitarian principle of equality of opportunity, and if so, whether we ought to forbid them because they undermine community or because of some other value or reason. In Chapter 4 I argue that, even though inequalities resulting from voluntary choice on the part of the bearer are *prima facie* just, because the bearer can, in virtue of that choice, be held personally responsible for her relative disadvantage, we ought not to leave people to bear the consequences of their voluntary choices, both in principle and in practice, when the effect is their falling below a sufficiency threshold of what is required in order to live a decent life. We ought not to allow this because insufficiency for the imprudent is more repugnant than securing sufficiency for all, either through restricting people's negative freedom to participate in risk and/or through forcing the prudent to bear the costs of other's imprudence. Yet because of the unfairness involved in the latter means of securing sufficiency for all, it ought to be secured to the greatest extent possible by special taxes, compulsory insurance and/or prohibition on reckless activities before turning to redistributive taxation. Thus, I embrace a sufficiency-constrained luck egalitarianism that seeks to minimize the unfairness of the prudent having to bear the costs of other's imprudence.

As Cohen's community-constrained luck egalitarianism keeps the relevant inequalities within a range that ensures people's lives, where possible, labor under similar challenges, it is more demanding than sufficiency-constrained luck egalitarianism. For we can imagine large inequalities resulting from voluntary choice where those at the lower end enjoy a decent life but nevertheless lead lives that labor under significantly different challenges to the very rich. In circumstances such as these the bearers of inequality do not qualify for compensation on a sufficiency-constrained luck egalitarian view. But on Cohen's community-constrained luck egalitarian view, the inequality ought to be reduced to the extent that the lives of the worse-off and better-off labor under similar challenges. I argue that the value of community is not a weighty enough reason to justify such further tempering of inequality by coercive means when everyone is guaranteed a minimally decent life and no inequalities exist for which people cannot be held personally responsible. But this is no objection to the community principle, because rather than temper inequality to a greater extent than a sufficiency qualification by coercive means, it does so by means of voluntary non-state agency.

However, as noted previously, I am more concerned with what we ought to do in practice than with what is possible in principle, and so I evaluate Cohen's community-constrained luck egalitarianism in much the same way as I evaluate his ethical solution to the equality-Pareto-freedom trilemma in Chapter 2. That is, I evaluate it in the context of the prerogative to pursue self-interest to a reasonable extent, for which Cohen allows, and people's predictable use of it. In this context, when people are guaranteed a decent life and suffer no disadvantage

above the sufficiency threshold for which they cannot be held personally responsible, voluntarily helping the worse-off falls within the better-off's prerogative not to do. As in all probability many of the better-off will exercise that prerogative, and because luck egalitarianism ought to be tempered to avoid abandonment of the imprudent to unnecessary suffering, I conclude that, in practice, equality of opportunity ought to be constrained by a sufficiency qualification that is realized by means of state coercion, rather than by Cohen's community principle.

4.6. Through careful examination of these texts, then, it is possible to clarify Cohen's positive contribution to the question of what type of society we ought to seek. I identify four views:

1. The appropriate metric of egalitarian interpersonal comparison is *equal access to advantage*. A luck egalitarian principle of equality of opportunity where opportunities are specified as some set of desirable states of the person that one has access to in light of her resources, welfare and perhaps other things.
2. In principle, equality of opportunity, Pareto-efficiency and freedom of occupational choice are co-obtainable when people's occupational choices are informed by a commitment to equality of opportunity in combination with a commitment to produce Pareto-efficiently both in terms of productive capacity and occupational choice.

3. In practice, the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency.
4. In principle, equality of opportunity ought to be constrained by a principle of community that is realized by means of voluntary non-state agency.

For those reasons highlighted in this summary, my evaluation of these views leads me to conclude:

1. The appropriate metric of egalitarian interpersonal comparison is not equal access to advantage, but rather an alternative luck egalitarian principle of equality of opportunity where opportunities are specified in terms of resources.
2. Although equality of opportunity, Pareto-efficiency and freedom of occupational choice might be co-obtainable in principle, they are not co-obtainable in practice.
3. Cohen's view that, in practice, the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency is best understood as a pluralist distributive ethic that combines telic egalitarian and telic prioritarian beliefs. Neither the levelling down objection to telic egalitarianism nor the Otsuka-Voorhoeve objection to prioritarianism show this distributive ethic to be implausible.

4. Equality of opportunity ought to be constrained in both principle and in practice, and in practice it ought to be constrained by a sufficiency qualification rather than by Cohen's community principle.

With respect to conclusions 2 and 4 one might be tempted to argue that views 2 and 4 are views about what is possible in *principle*, and yet conclusions 2 and 4 are conclusions about what is possible, and about what we ought to do, in *practice*. Similarly to how Andrew Williams criticizes Cohen for talking at cross purposes with Rawls²³, one might therefore accuse me of talking at cross purposes with Cohen. In response I highlight the fact that I do not frame conclusions 2 and 4 as objections to views 2 and 4, on the contrary, I emphasize that they are not objections. Moreover, even though it is open to Cohen to agree with conclusions 2 and 4, they are nevertheless important when it comes to clarifying and evaluating his positive contribution to the question of what type of society we ought to seek. For we see that much of his contribution is about what is possible in principle, rather than in practice, and is in that sense utopian. In light of the fact that his turn from Marxism to normative political philosophy was originally motivated by a belief that leftists need to be clearer about what we seek and why, I find this disappointing. For Cohen has very little to say about what the left ought to seek in practice, which is surely more important than what is possible when we abstract from the relevant social facts. This is a matter on which I reflect in greater detail at the end of the thesis.²⁴

²³ See section 3.3

²⁴ See Conclusion, section 2

Chapter 1

Equal Access to Advantage

1. Introduction

As set out in the Introduction, my aim is to clarify and evaluate Cohen's positive contribution to the question of what type of society we ought to seek. In this chapter I take the first step to achieving this aim by clarifying and evaluating his preferred luck egalitarian principle of equality of opportunity, which he defends at length in *On the Currency of Egalitarian Justice* and related follow-up essays on luck egalitarianism. These essays comprise his critical engagement with Ronald Dworkin and his contribution to what is commonly known as the "equality of what?" debate. Named after Amartya Sen's seminal 1979 Tanner Lecture on Human Values¹, this debate concerns what is the appropriate metric of egalitarian interpersonal comparison: should egalitarians seek to alleviate and/or compensate for inequality of outcome or inequality of opportunity, and should egalitarians specify outcomes or opportunities in terms of welfare, capabilities, resources or some hybrid?

Cohen's answer to "equality of what?" is *equal access to advantage*. It is a reactive answer, in that it is presented as a critique of Richard Arneson's originally favored *equal opportunity for welfare* and Dworkin's *equality of resources*, and as bearing some resemblance to Sen's *equality of capability*. Rather than conceptualize fair shares in terms of opportunity for welfare or resources, Cohen argues that we should equalize access to advantage specified as

¹ See Sen, 1980.

some set of desirable states of the person that one has access to in light of her resources, welfare and perhaps other things. Since Cohen's argument for equal access to advantage takes the form of critique, its evaluation requires an understanding of that to which he is reacting. As it makes for neater exposition I therefore clarify and evaluate the views of Arneson, Sen and Dworkin, before proceeding to clarify and evaluate equal access to advantage.

Cohen favors equal access to advantage over equal opportunity for welfare and equality of resources because he thinks that it, as opposed to those alternatives, correctly answers compensation claims for physical impairments and expensive tastes (preferences that require more resources to satisfy but when satisfied provide the bearer with equal welfare to those with less expensive tastes). Contra Cohen, I argue that equality of resources answers these claims for compensation correctly, and that equal access to advantage is susceptible to *the problem of indexing*, *the problem of perfectionism* and *the problem of expensive tastes*, with the latter being reinforced by the appeal of *the continuity test*. I therefore conclude that the appropriate metric of egalitarian interpersonal comparison is not equal access to advantage, but rather an alternative luck egalitarian principle of equality of opportunity where opportunities are specified in terms of resources.

2. Equality of what?

2.1. Before clarifying the alternative metrics to which Cohen's argument for equal access to advantage reacts, it should be noted why many contributors to the debate, including Cohen, favor equality of opportunity over equality of outcome.

As Clayton and Williams point out in their summary of the debate, equality of outcome is susceptible to ‘the familiar conservative criticism that egalitarianism is blind to personal responsibility’ (Clayton and Williams, 2002, p. 8). The thought behind this line of critique is that equality of outcome unfairly requires the prudent to bail out the reckless.

To illustrate, let us imagine a world in which two people, reckless Rita and prudent Pam, start from a position of equality of outcome specified in terms of wealth, and let us further imagine that whereas Rita voluntarily chooses to squander her wealth playing exorbitant amounts of bingo, Pam voluntarily chooses to retain much of her wealth in savings; a voluntary choice being one that is made in the absence of coercion and with full knowledge of the relevant facts. Clearly, inequality of outcome specified as wealth will quickly obtain between reckless Rita and prudent Pam as a result of their choices. To re-establish equality of outcome will require that some percentage of Pam’s wealth be redistributed to Rita; perhaps on numerous occasions if Rita continues to squander her wealth down the bingo hall. Many would consider that unfair, even if it were only a one off redistribution, as Rita bears personal responsibility for her relative disadvantage and yet Pam, who bears no personal responsibility for it whatsoever, pays the price for Rita’s voluntary choice. If, in the above case, we instead deem the appropriate metric of interpersonal comparison to be equal *opportunity* for wealth, and we further imagine that Rita and Pam enjoy equal opportunity for wealth, then no relevant inequality obtains. Instead, Rita will be left to bear the consequences of her voluntary choice and egalitarians escape the conservative critique.

Of course, in contemporary societies equality of opportunity does not obtain. As opposed to characterizing our protagonists as reckless and prudent we might therefore characterize them in terms of their social and economic circumstances. Let us imagine that whereas rich Rose had the good fortune to be born to wealthy parents with advantageous social connections, poor Pip had the misfortune to be born to heroine addicts who live in abject poverty. In contemporary societies Rose's and Pip's opportunities to acquire wealth will differ greatly as a consequence of their different social and economic circumstances for which neither is personally responsible. To take one especially pervasive example of how this is true, we might imagine that Rose and Pip are born with similar levels of natural ability but that Rose's abilities are fostered to a greater extent than Pip's. This might be the result of Rose's parent's buying their daughter a superior private education, or because Rose's parents foster their daughter's natural abilities through familial relations (bedtime stories, helping with home work, etc) whereas Pip suffers from parental neglect as a consequence of her parents' addiction. Either way, Rose will likely become more able than Pip over time and consequently enjoy occupational opportunities not open to Pip, which, of course, are opportunities to acquire wealth.

The more radical principles of equality of opportunity seek to alleviate and/or compensate not only for inequalities of opportunity that result from social and economic circumstance, as in the case of rich Rose and poor Pip, but also for inequalities of opportunity that result from differences in natural ability. For just as people cannot be held personally responsible for the social and economic circumstances into which they are born, neither can they be held personally

responsible for the varying degrees of natural ability with which they are born. As John Rawls says, when ‘distributive shares are decided by the outcome of the natural lottery..., this outcome is arbitrary from a moral perspective. There is no more reason to permit the distribution of income and wealth to be settled by the distribution of natural assets than by historical and social fortune’ (Rawls, 1999, p. 64).

To illustrate, let us imagine that able Amy and impaired Ida are sisters such that they were born into the exact same social and economic circumstances. However, whereas Amy had the good fortune to be born with great natural ability, Ida had the misfortune to be born with severe learning difficulties. As a consequence of these differences in natural ability, for which neither individual is personally responsible, Amy will enjoy all sorts of opportunities that Ida will not. For instance, come adulthood Amy’s greater natural ability and Ida’s severe learning difficulties will likely result in Amy enjoying occupational opportunities not open to Ida. All else being equal, Amy and Ida type cases suggest that we should seek to alleviate and/or compensate for all inequalities of opportunity for which people cannot be held personally responsible. That is, all else being equal, we should seek to alleviate and/or compensate not only for inequalities of opportunity that result from differences in social and economic circumstance for which people cannot be held personally responsible, but also for inequalities that result from differences of natural ability for which people cannot be held personally responsible.

An alternative way of characterizing equality of opportunity, then, is as alleviating and/or compensating for inequalities that result merely from the

bearer's bad brute luck; 'brute luck' being distinct from 'option luck' in that whereas the bearer cannot be held personally responsible for the former, she can be held personally responsible for the latter because it involves a voluntary choice on her part to partake in some sort of gamble or risk. As we have seen, equality of opportunity seeks to correct for inequalities of opportunity that result from people's bad brute luck with respect to their social and economic circumstances, and the more radical equality of opportunity metrics go further by additionally seeking to correct for inequalities of opportunity that result from people's bad brute luck with respect to their natural abilities. It is for this reason that Elizabeth Anderson famously branded a variety of equality of opportunity metrics 'luck egalitarianism' (Anderson, 1999, p. 289).² Broadly speaking, luck egalitarians maintain that, all else being equal, inequalities that result from brute luck are *prima facie* unjust because the bearer cannot be held personally responsible for her relative disadvantage, whereas inequalities that result from voluntary choice on the part of the bearer are *prima facie* just because she can, in virtue of that choice, be held personally responsible for her relative disadvantage.

2.2. Although Arneson later came to recant *equal opportunity for welfare* in favour of *responsibility-catering prioritarianism*³, I am concerned only with the former, because equal opportunity for welfare is that to which Cohen's argument for equal access to advantage reacts. Since welfare is a somewhat vague concept, welfare egalitarians must adopt a specification of it for the purposes of egalitarian interpersonal comparison, otherwise it is by no means clear what they

² Anderson's seminal critique of luck egalitarianism is discussed in Chapter 4, section 3.1.

³ See Arneson, 1999 & 2000.

seek to equalize. When previously arguing for equal opportunity for welfare, Arneson adopted an *ideal* preference-satisfaction specification of welfare: ‘I take welfare to be [ideal] preference satisfaction... The extent to which a person’s life goes well is the degree to which his ideally considered preferences are satisfied. My ideally considered preferences are those I would have if I were to engage in thoroughgoing deliberation about my preferences with full pertinent information, in a calm mood, while thinking clearly and making no reasoning errors’ (Arneson, 1989, pp. 82-83).

By specifying welfare as ideal preference-satisfaction Arneson escapes *the problem of misinformed preferences*. If we were to adopt an *actual* preference-satisfaction specification of welfare, equality of welfare would require that we equalize the satisfaction of preferences that people actually have regardless of their basis, to which an objector might pose the question: “Why should we seek to alleviate and/or compensate for inequalities of actual preference-satisfaction when people’s actual preferences can be based on misinformation, irrational thinking, ignorance, inexperience, and so on?” The objector’s point is that because of such factors, to equalize actual preference-satisfaction is to equalize the satisfaction of preferences that in some cases will not improve people’s welfare and may even be detrimental to it. For example, misinformed Mel might have an actual preference for homeopathic remedies that are of no medicinal benefit to her whatsoever. Equality of welfare specified as actual preference-satisfaction therefore appears counterintuitive, as its realization will likely involve wasting resources on satisfying preferences that are not beneficial to people’s welfare.

A similar problem is *the problem of malformed preferences*. People's preferences are malformed when they have subconsciously formed their preferences in accordance with their un-chosen circumstances. For example, poor Pete and rich Rob may have subconsciously formed their preferences according to their economic circumstances, such that Pete gains the same level of preference-satisfaction from dinning at McDonalds as Rob gains from dinning at a Michelin-starred restaurant. Equality of welfare specified as actual preference-satisfaction can therefore treat people unfairly, for it can view people as equal despite the possibility that their preferences are relevantly malformed.

By specifying welfare as ideal preference-satisfaction Arneson avoids both of these problems. As regards the problem of misinformed preferences, to equalize for ideal preference-satisfaction is to equalize only for the satisfaction of those preferences that, because they are ideally considered, will be beneficial to people's welfare. As regards the problem of malformed preferences, that the satisfaction of preferences being equalized for are those that are ideally considered negates the possibility of people subconsciously forming their preferences in accordance with their un-chosen circumstances. It should be remembered, however, that Arneson originally favored equal *opportunity* for welfare, not, equality of welfare. Thus, he recognizes that inequalities of opportunity for ideal preference-satisfaction can obtain as a result of voluntary choices for which people should be held personally responsible, such as a choice to partake in an option luck gamble that leaves one with insufficient resources to satisfy her ideal preferences to an equal degree as others (Arneson, 1989, pp. 83-84).

But welfarists encounter further problems. They also face *the problem of expensive tastes*; ‘tastes’ being just another word for preferences. As Dworkin argues, ‘the problem of expensive tastes... [is that e]quality of welfare seems to recommend that those with champagne tastes, who need more income simply to achieve the same level of welfare as those with less expensive tastes, should have more income on that account’ (Dworkin, 2002, pp. 48-49). Dworkin finds this counterintuitive, in the sense that equality of welfare grants those with expensive tastes more than their fair share of resources and, since resources are finite, consequently denies those with cheap tastes their fair share of resources.

To illustrate, Dworkin asks us to imagine a society in which equality of welfare has been achieved and that by coincidence it has been achieved consistent with equality of wealth. Following this Louis voluntarily develops an expensive taste for plover’s eggs that he cannot satisfy with his current wealth allocation such that he comes to suffer from inequality of welfare. To re-establish equality of welfare requires that wealth be redistributed from those with less expensive tastes to Louis (Dworkin, 2002, p. 49-50). To further illustrate, he then asks us to imagine a society that initially achieves equality of welfare via an unequal distribution of wealth, because Jude’s cheap tastes mean that he requires less wealth to attain the same welfare level as others. After reading Hemmingway, however, Jude develops an expensive taste for bullfighting that he cannot satisfy with his current wealth allocation so that he comes to suffer from inequality of welfare. Importantly, whereas re-establishing equality of welfare in Louis’ case requires that he be allocated more wealth than others, re-establishing equality of welfare in Jude’s case requires that he be allocated no more wealth

than others, because his initial tastes were so cheaply satisfied. If, because of this fact, our intuition is to compensate Jude but not Louis, then, so Dworkin argues, we are inclining toward a conceptualization of fair shares in terms of resources rather than welfare (Dworkin, 2002, p. 58).

Responding to the problem of expensive tastes, Arneson points out that Jude's case raises concerns about preference formation. If Jude has subconsciously formed his initial tastes in accordance with a small wealth allocation, then it is an example of malformed preferences that gives us reason to compensate Jude and not Louis without appealing to fair shares in terms of resources (Arneson, 2002, p. 191). But Dworkin's examples should not be interpreted as such. As I understand them, the initial distribution of wealth in each case occurs only after an assessment of what people require for equality of welfare to obtain. In the former case wealth is initially distributed equally only after it is known that equality of wealth happens to be consistent with equality of welfare, and in the latter case wealth is initially distributed unequally only after it is known that Jude requires less than others for equality of welfare to obtain.

Arneson, however, goes further than merely pointing out concerns about preference formation. Dworkin's examples employ equality of welfare as opposed to equal opportunity for welfare (although, as shall become evident, the case of Jude anticipates equal opportunity for welfare). As Arneson suggests, we might therefore imagine a society that initially achieves equal opportunity for welfare. We then imagine that Louis and Jude develop expensive tastes which cause them to suffer from inequality of welfare. In terms of equal opportunity for welfare, whether Louis and Jude's expensive tastes qualify for compensation

depends on whether they were developed in a sufficiently voluntary or involuntary way. If Louis voluntarily develops his expensive taste, as in Dworkin's example, he is personally responsible for his disadvantage and does not qualify for compensation. The same applies to Jude if he voluntarily chose to develop his expensive taste or knew it to be a likely consequence of some other voluntary course of action. If, however, Jude developed his expensive taste in a sufficiently involuntary way, then, he qualifies for compensation because through no fault of his own he has fewer opportunities for welfare (Arneson, 2002, pp. 191-192).

Appealing to equality of opportunity provides Arneson and other welfarists with a reply to the problem of expensive tastes, but not one which fits with my intuitions. In effect, the reply argues that there is nothing counterintuitive or unfair about granting some more resources than others in order to realize equal opportunity for welfare, because when an expensive taste is involuntarily developed the bearer cannot be held personally responsible for having fewer opportunities for welfare than others. Those who are inclined toward an ideal of fair shares in terms of resources may argue that the recommendations of equal opportunity for welfare remain counterintuitive, because compensating for involuntary expensive tastes requires denying those with cheap tastes their fair share of resources. But those who embrace equal opportunity for welfare reject that conceptualization of fair shares. Instead, they favor an ideal of fair shares in terms of equal opportunity for welfare. Thus, so long as cheap tastes are not misinformed or malformed, those with cheap tastes

are not denied their fair share when they have sufficient resources to enjoy equal opportunity for welfare.

That reply, however, overlooks Dworkin's point vis-à-vis the case of Jude. In Arneson's reworking of the example, equal opportunity for welfare is realized consistent with inequality of resources because of Jude's cheap preferences. This might initially seem fair. After all, the reason we care about resources is because of their instrumental value to the realization of other things, such as opportunity for welfare. To think of fair shares in terms of resources therefore appears superficial; *the problem of superficiality* is often pressed by welfarists in response to resource metrics. But the counterintuitive recommendations of equal opportunity for welfare are evident only after Jude develops his new expensive taste. For according to it, if Jude develops his new expensive taste voluntarily he has no claim to compensation, *even though compensation would still leave him with fewer resources than others because his initial tastes were so cheaply satisfied*. I find that recommendation counterintuitive, for it is surely unfair that Jude is denied the ability to satisfy his new taste simply because he voluntarily developed it. Whether he developed it voluntarily or involuntarily is beside the point, what matters is that compensation requires allocating him no more than his fair share of resources. My intuitions vis-à-vis Jude are therefore supportive of equality of resources. As shall become evident when returning to the problem of expensive tastes in the evaluation of equal access to advantage to follow, Dworkin believes that the relevant intuition is supported by reasons as to why the distinction between voluntary and

involuntary expensive tastes is unsustainable, and why compensating for expensive tastes is to treat people as alienated from their personalities.

What if, contrary to Arneson, welfare egalitarians were to adopt an objective specification of welfare for the purposes of egalitarian interpersonal comparison? Would equal opportunity for welfare remain problematic? Objective list theories of well-being hold that the more objectively valuable goods people have the higher their level of welfare; objectively valuable goods being those goods that are deemed beneficial to people's welfare irrespective of their value judgments and thus irrespective of their subjective preferences. As the value of these goods is not subjective, it must be derived from somewhere else. It is common here to turn to perfectionist theories of the good-life, so that the list of goods and their value is derived from a theory as to what people require in order to live a perfect human life. Yet if a welfarist makes this turn they face *the problem of perfectionism*. To defend a perfectionist theory of the good-life is a significant undertaking which may prove indefensible. Furthermore, even if such a theory can be successfully defended, we might nevertheless doubt its suitability for deriving a list of objectively valuable goods for the purposes of egalitarian interpersonal comparison.

Anti-perfectionist liberals believe, rightly in my view, that people should be free to pursue their own conception of the good-life. This requires what Kymlicka calls 'liberal neutrality;' it requires 'that the state should not reward or penalize particular conceptions of the good life but, rather, should provide a neutral framework within which different and potentially conflicting conceptions of the good can be pursued' (Kymlicka, 1989, p. 883). Drawing on the work of

Joseph Raz⁴, Kymlicka draws a distinction between two principles of liberal neutrality: '[*consequential* neutrality] requires that the state seek to help or hinder different life-plans to an equal degree..., [whereas *justificatory* neutrality] allows that government action may help some ways of life more than others but denies that government should act in order to help some ways of life over others... The first requires neutrality in the consequences of government policy; the second requires neutrality in the justification of government policy' (Kymlicka, 1989, pp. 883-884).

Equalizing for welfare or opportunity for welfare specified as a list of objectively valuable goods whose value is derived from a perfectionist theory of the good-life, conflicts with consequential neutrality because the consequences of that distributive policy, rather than be neutral, favor the pursuit of the relevant perfectionist conception of the good-life. However, we should not embrace consequential neutrality, for as Kymlicka argues, even respecting basic liberties is likely to have non-neutral consequences; for example, freedom of speech and freedom of association will result in some conceptions of the good-life being more popular than others (Kymlicka, 1989, p. 884). But the very same distributive policy also conflicts with justificatory neutrality, because the list of goods or opportunity for goods being equalized for cannot be justified over some other list without appeal to the relevant perfectionist theory. Welfarists who adopt an objective specification and who wish for the state to maintain justificatory neutrality must therefore provide a non-perfectionist explanation of from where their list of goods derives its objective value.

⁴ See Raz, 1986, part II.

2.3. Sen's answer to "equality of what?" is *equality of capability*. As he explains, the capability approach to egalitarian interpersonal comparison views the extent to which people are advantaged 'in terms of his or her actual ability to achieve various valuable functionings as a part of living... *Functionings* represent parts of the state of a person – in particular the various things that he or she manages to do or be in leading a life. The *capability* of a person reflects the alternative combinations of functionings the person can achieve, and from which he or she can choose one collection' (Sen, 1993, pp. 30-31). Equality of capability therefore seeks to equalize people's capabilities to realize valuable functionings understood as valuable states of the person.

Sen places functionings into two categories. 'Elementary' or 'basic' functionings are states of the person such as being adequately nourished and being in good health, whereas 'complex' functionings are states of the person such as achieving self-respect and social integration. He maintains that basic functions are 'valued by all, for obvious reasons,' and that complex functions are 'still widely valued' (Sen, 1993, p. 31). From such comments Sen might appear to be embracing a subjective theory of value, since both categories of functionings are said to derive their value from people's value judgments. Alternatively, it could be that various functionings are objectively valuable; that they are valuable independent of people wanting them and that they are universally valued or at least widely valued because people recognize their objective value. In fact, Sen refrains from embracing a theory of value with the consequence that his approach to egalitarian interpersonal comparison remains incomplete. He insists, however, that 'quite different specific theories of value

may be consistent with the capability approach, and share the common feature of selecting value-objects from functionings and capabilities' (Sen, 1993, p. 48).

Like welfarists, Sen considers basic resource metrics such as equality of wealth to be superficial, since 'the conversion of income into basic capabilities may vary greatly between individuals and also between different societies' (Sen, 1993, p. 41). But Sen is also critical of welfarists for sometimes failing to compensate for inequalities of capability. To illustrate, Sen asks us to imagine an individual who despite suffering from a physical impairment enjoys equality of welfare specified as either happiness or actual preference-satisfaction; he enjoys equality of happiness because despite his physical impairment he happens to have a 'jolly disposition,' or he enjoys equality of actual preference-satisfaction because he prefers not to be compensated, believing that 'he will be rewarded in after-life..., [or that his impairment is] just penalty for misdeeds in a past incarnation' (Sen, 1980, p. 217). If we think that this individual should nevertheless be compensated for his physical impairment, then, the relevant welfare metrics appear counterintuitive.

Of course, welfarists who embrace either hedonist or actual preference-satisfaction specifications of welfare can simply bite the bullet in response to Sen's example; they can argue that physical impairments do not warrant compensation when the bearer does not suffer from inequality of welfare and that the intuition to nevertheless compensate is mistaken. In addition, Sen's example is not problematic for welfarists such as Arneson who embrace an ideal preference-satisfaction specification of welfare, nor is it problematic for certain objective specifications of welfare. The actual preference of Sen's individual not

to be compensated for his physical impairment may be misinformed; atheists would certainly consider it so. If that is the case, then his physical impairment qualifies for compensation on an ideal preference-satisfaction view. As regards objective specifications of welfare, absence of physical impairment could well be amongst those goods that are deemed objectively valuable with respect to people's welfare. If so, the physical impairment of Sen's individual qualifies for compensation regardless of his level of happiness or preference-satisfaction.

The key problem with the capability approach is *the problem of indexing*. To realize equality of capability requires an index of the various valuable functionings and their relative worth so that a capability score can be summed for each individual and compared against the scores of others. If a subjective theory of value is adopted this will prove difficult, as the number of valuable functionings will be extensive whilst their value will differ, sometimes greatly, between individuals. Add to this the fact that acquiring the necessary information with respect to people's value judgments is unfeasible, and the creation of the required index appears implausible.

To create an index that specifies what functionings are valuable and their relative worth the capability approach would have to adopt an objective theory of value. But if the index is derived from a perfectionist theory of the good-life, equality of capability will be susceptible to the problem of perfectionism. Equalizing for a list of objectively valuable functionings whose value is derived from a perfectionist theory of the good-life conflicts with justificatory neutrality, because the list of functionings being equalized for cannot be justified over some other list of functionings without appeal to the relevant perfectionist theory.

Those who favor equality of capability and who wish for the state to maintain justificatory neutrality must therefore provide a non-perfectionist explanation of from where their list of functionings derives its objective value.

2.4. Dworkin's argument for *equality of resources* begins with him asking us to imagine a hypothetical market process that originates with a group of shipwreck survivors located on an unpopulated island. These individuals face no prospect of being rescued anytime soon, and since none of them can claim entitlement over the island's resources, they agree that the resources should be divided between them equally. Importantly, they also agree to *the envy test*, according to which: 'No division of resources is an equal division if, once the division is complete, any immigrant would prefer someone else's bundle of resources to his own bundle' (Dworkin, 2002, p. 67).

An element of potential unfairness remains, however, since the envy test can be satisfied without avoiding arbitrary compositions of the resource bundles to be distributed; one may prefer that the bundle compositions were different yet the envy test can be satisfied so long as no individual prefers another's bundle to their own. Dworkin's solution is to hold an auction in which all of the island's resources are sold and in which each individual participates with equal currency. Following the auction the envy test is satisfied as no individual should prefer another's resource bundle to their own, whilst arbitrary compositions of those bundles is avoided through an auction process in which 'each person played, through his purchases against an initially equal stock of [currency], an equal role in determining the set of bundles actually chosen' (Dworkin, 2002, p. 68).

A particular strength of equality of resources is that it does not require us to embrace a theory of value or to construct an index of valuable resources. The subjective value of resources, regardless of whether their value is in truth subjective or objective, is determined by the auction. It also has the benefit of remaining neutral as regards conceptions of the good-life, because an auction in which all resources are up-for-grabs and in which everyone has equal currency provides everyone with an equal chance of acquiring the resources they deem instrumentally valuable to the pursuit of their conception of the good-life.

A difficulty for Dworkin is that inequalities of resources can obtain post-auction for which people cannot be held personally responsible. For example, post-auction one may use their resources in an entrepreneurial manner such that they come to acquire more resources than another who, for instance, squanders their initial resources on an option luck gamble from which they lose. Although luck egalitarians would consider this outcome just because the relevant individuals are personally responsible for the inequality that obtains, these individuals may bear children who though no fault of their own would likely suffer from inequality of opportunity as a result of the differing economic circumstances of their parents. In other words, cases such as the aforementioned rich Rose and poor Pip can obtain post-auction.⁵

Not wishing to embrace a metric of egalitarian interpersonal comparison that allows for such outcomes, Dworkin maintains that equality of resources is to be understood as *ambition-sensitive* but *endowment-insensitive*. It is ambition-sensitive in that it 'allow[s] the distribution of resources at any particular moment

⁵ See section 2.1

to... reflect the cost or benefit to others of the choices people make so that, for example, those who choose to invest rather than consume, or to consume less expensively rather than more, or to work in more rather than less profitable ways must be permitted to retain the gains that follow from these decisions' (Dworkin, 2002, p. 89). It is endowment-insensitive in that it does 'not allow the distribution of resources at any moment to... be affected by differences in ability of the sort that produce income differences in a laissez-faire economy among people with the same ambitions' (Dworkin, 2002, p. 89). In effect, Dworkin's resource metric employs a luck egalitarian distinction between inequalities for which people cannot be held personally responsible and which therefore qualify for compensation, and inequalities for which people can be held personally responsible and which do not therefore qualify for compensation.

As equality of resources is concerned not only with impersonal resources understood as external goods but also with personal resources understood as people's physical and mental abilities, Dworkin requires a method of equalization as regards the latter. For although inequalities of impersonal resources for which people cannot be held personally responsible can be corrected post-auction by redistributive means, inequalities of personal resources for which people cannot be held personally responsible, such as being born with a severe mental and/or physical impairment, can only be compensated for by allocating the bearer additional impersonal resources.

Dworkin's solution is a hypothetical insurance market that individuals 'effectuate through compulsory insurance at a fixed premium for everyone on the basis of speculations about what the average immigrant would have purchased by

way of insurance had antecedent risk of various handicaps been equal' (Dworkin, 2002, p. 80). Those who bear severe physical and/or mental impairments are then eligible to claim from the insurance fund. Paralysis and Huntington's disease are clear examples of physical and mental impairments that would qualify. It should be noted that expensive tastes the bearer would prefer to be rid of, such that she would be willing to take a preference-changing pill, also constitute compensation qualifying impairments (Dworkin, 2002, pp. 291-293). But what about merely lacking in natural ability? Is that a compensation qualifying impairment? After all, equality of resources is meant to be endowment-insensitive. However, equality of resources is not completely endowment-insensitive. Instead, Dworkin favors a progressive redistributive tax scheme based on another hypothetical insurance market in which people can insure against not having the talents necessary to achieve a moderate income (Dworkin, 2002, pp. 92-109). Thus, equality of resources ensures a moderate income regardless of natural ability, but inequalities of resources between people with the same ambitions might nevertheless remain post-auction due to differences in ability for which the bearer cannot be held personally responsible (Dworkin, 2002, p. 104).

Does this fact mean that we should reject equality of resources? Dworkin maintains that the hypothetical insurance device 'is ex ante better for everyone (except, perhaps, citizens who are imprudent) than a rescue approach [which, in the relevant case, requires equalization to an extent greater than ensuring a moderate income and perhaps even full equalization], because it gives each the choice as to how much future protection he wishes as against how much sacrifice, in the form of insurance premiums, he is willing and deems it right to

make now, rather than forcing on him a collective decision that no one would make for himself' (Dworkin, 2002, p. 342). In other words, equalizing for inequalities of resources traceable to differences in natural ability to an extent greater than guaranteeing a moderate income would require a level of redistributive taxation that effectively imposes far more expensive insurance premiums than what people would choose for themselves. The greater the income one insures against being unable to realize, the greater the cost of the insurance premium, such that the potential benefit is offset. Of course, the hypothetical insurance device is exactly that, hypothetical, and so we can only speculate about what level of insurance the average individual would purchase when devising a progressive redistributive tax scheme. Yet we can assume that on average people would purchase some level of cover but nothing approaching a 'rescue policy' because the potential benefit would be offset by the expensive cost of the premium. It thus seems fair to ask those who bear inequalities of resources due to differences in natural ability to be satisfied with a redistributive tax scheme that guarantees them the average income that people would insure against being unable to realize, which would be something like a moderate income (Dworkin, 2002, pp. 342-345).

Despite the complexity of Dworkin's view welfarists might nevertheless claim that, like more basic resource metrics, it is susceptible to the problem of superficiality. As noted when discussing the problem of expensive tastes⁶, welfarists can argue that resources are merely of instrumental value to the realization of other things and that what matters when drawing egalitarian

⁶ See section 2.2

interpersonal comparisons is opportunity for welfare. It is open to them to argue that the auction and the envy-test are irrelevant, for although one may not prefer another's resource bundle to their own, one may nevertheless have insufficient resources to enjoy equal opportunity for welfare, whilst others in virtue of their cheap tastes may have resource holdings surplus to what they require to enjoy equal opportunity for welfare.

Yet, as previously argued, the problem of expensive tastes, particularly in the case of Jude, shows equal opportunity for welfare to have counterintuitive recommendations. In cases where equal opportunity for welfare is achieved consistent with inequality of resources because some, in virtue of their cheap tastes, require fewer resources than others for it to obtain, it counterintuitively denies those with initially cheap tastes compensation for newly voluntarily developed tastes even though compensation would still leave them with fewer resources than others because their initial tastes were so cheap. It is unfair to deny these people their fair share of resources simply because they voluntarily chose to develop a new taste. Equality of resources thus appears not superficial, but a requirement of fair distribution. Moreover, as I alluded to previously, the relevant intuition rests on compelling reasons as to why people should take responsibility for their tastes. These reasons come to the fore in Dworkin's reply to Cohen's critique of equality of resources.

3. Cohen's hybrid: equal access to advantage

3.1. Cohen opts not to embrace equal opportunity for welfare because he thinks that 'some of Dworkin's objections to equality of welfare cannot be handled in

Arneson's way, and that the right response to them is to affirm... *equal access to advantage*, where "advantage" is understood to include, but be wider than, welfare' (Cohen, 2011a, p. 4). The objections to which Cohen here refers relate to compensation claims for physical impairments and expensive tastes which he maintains both equal opportunity for welfare and equality of resources give incorrect answers. Reacting to this, he argues in favor of a hybrid specification of equality of opportunity that he thinks answers the relevant compensation claims correctly. Since Cohen's argument for equal access to advantage is reactive, taking the form of a critique of equal opportunity for welfare and equality of resources, I proceed to evaluate Cohen's argument for equal access to advantage by evaluating his critique of these metrics of egalitarian interpersonal comparison.

3.2. Before evaluating equal access to advantage, it is worth explaining why Cohen prefers to speak of "access" than of "opportunity," and why his metric of advantage is incredibly vague. This is worth explaining not only for clarity of exposition, but because it reveals Cohen's own dissatisfaction with equal access to advantage.

For Cohen, talk of "access" is preferable to talk of "opportunity" when referring to equality. As he sees it, '[y]our opportunities are the same whether you are strong and clever or weak and stupid: if you are weak and stupid, you may not use them well – but that implies that you have them' (Cohen, 2011a, p. 14). That thought strikes me as somewhat nonsensical, for it makes little sense to say that people born with limited natural ability enjoy the same opportunities as

those born with great natural ability. For example, unintelligent people do not have, nor do reasonably intelligent people for that matter, the opportunity to become a theoretical physicist. For this reason, I think Cohen would have done better to name his metric of egalitarian interpersonal comparison equal *opportunity* for advantage. But, of course, this is nothing more than semantics.

The important point is that Cohen's preference for "access" is motivated by his belief that *all* involuntary disadvantages should be of egalitarian concern; involuntary disadvantage being disadvantage for which the bearer cannot be held personally responsible because its source is bad brute luck as opposed to a voluntary choice on her part (Cohen, 2011a, p. 13). His preference for "access" reflects a concern that talk of "opportunity" may neglect inequalities that result from differences in natural ability for which the bearer cannot be held personally responsible and which should therefore qualify for compensation. Thus, Cohen is a luck egalitarian and equal access to advantage is a radical equality of opportunity metric; that is, equal access to advantage seeks to alleviate and/or compensate not only for inequalities of opportunity for advantage that result from social and economic circumstance, but also for inequalities of opportunity for advantage that result from differences in natural ability.

What requires greater clarification is Cohen's metric of advantage. In the above quote Cohen says, "'advantage' is understood to include, but be wider than, welfare.' That is an extremely vague conceptualization. How is welfare specified and what else, other than welfare, qualifies as advantage? Without an answer we have little idea as to what equal access to advantage actually equalizes. Unfortunately, Cohen provides no satisfactory answer. He avoids

adopting a particular specification of welfare; for illustrative purposes only does he refer to both hedonist and actual preference-satisfaction specifications. And with respect to what, other than welfare, qualifies, Cohen merely says that advantage includes ‘both resources and welfare, and perhaps other things too, in an open-ended conception’ (Cohen, 2011c, p. 61), and that it should be understood as ‘like Sen’s “functioning”..., a heterogeneous collection of desirable states of the person reducible neither to his resources bundle nor to his welfare level’ (Cohen, 2011b, p. 59). The former conceptualization is again incredibly vague, whereas the latter effectively makes equal access to advantage susceptible to the very same problems that plague equality of capability.

If advantage is to be understood as a heterogeneous collection of valuable states of the person, then, to compare people’s access to advantage will require the creation of an index of those valuable states of the person and their relative worth so that an access to advantage score can be summed for each individual and compared against the scores of others. Consistent with a subjective theory of value the creation of such an index will prove implausible, whilst if the index is based on an objective theory of value derived from a perfectionist theory of the good-life it will lead to the problem of perfectionism, and if not, then Cohen must explain from where the index derives its objective value.⁷ As Cohen admits in the afterword, ‘no method of aggregation of the different types of advantage was suggested, or may readily be envisaged, and the very heterogeneity that makes counterexamples absorbable also made me, and still makes me, wonder whether what I offered is any kind of *theory*, as opposed to a repository of

⁷ See section 2.3 and the end of section 2.2

conditions with which an acceptable theory must come to terms' (Cohen, 2011c, p. 61). Tellingly, he also admits that '[i]t remains puzzling that a metric should include both resources, out of which people generate welfare, and welfare itself' (Cohen, 2011c, p. 62).

Clearly, Cohen is not completely satisfied with equal access to advantage. It is an incomplete metric which if completed will encounter the same problems as Sen's equality of capability, whilst the need for a hybrid remains puzzling. He embraces it because he thinks equal opportunity for welfare and equality of resources give incorrect answers to compensation claims for physical impairments and expensive tastes. Thus, I now turn to evaluating whether that is true, and therefore whether we ought to embrace equal access to advantage.

3.3. As regards compensation claims for physical impairments, Cohen's critique of equal opportunity for welfare is much the same as Sen's attempt to discredit equality of welfare. He asks us to imagine an individual who requires an expensive wheelchair to be adequately resourced due to a severe physical impairment, but who is nevertheless 'blessed with abundant *opportunity* for happiness: [because] he need not do much to get a lot of it' (Cohen, 2011a, p. 15). If we think that he ought to be compensated for his impairment despite his abundant opportunity for happiness, then, equal opportunity for welfare specified as happiness appears counterintuitive.

With respect to Arneson's equal opportunity for welfare this counterexample is in no way problematic, because Arneson specifies welfare not as happiness, but as ideal preference-satisfaction; the preferences of Cohen's

impaired individual are given no weight in the counterexample. A Sen inspired alteration could be made such that the impaired individual does not suffer from inequality of opportunity for welfare specified as actual preference-satisfaction, because the individual prefers not to be compensated due to a belief that ‘he will be rewarded in the after-life’ or that his impairment is ‘just penalty for misdeeds in a past-incarnation.’⁸ If we think that he nevertheless ought to be compensated, then, equal opportunity for welfare specified as actual preference-satisfaction appears counterintuitive. But again, Arneson specifies welfare not as actual preference-satisfaction, but as ideal preference-satisfaction. As noted previously when responding to Sen’s impairment case, Arneson can point out that the individual’s actual preferences are likely misinformed. If his preferences were ideally considered, that is, if he were ‘to engage in thoroughgoing deliberation about [his] preferences with full pertinent information, in a calm mood, while thinking clearly and making no reasoning errors,’⁹ a preference to be adequately mobile as opposed to bedridden would likely be amongst them. Thus, Arneson’s equal opportunity for welfare recommends allocating the impaired individual the expensive wheelchair he requires. I therefore conclude that neither Cohen’s counterexample nor the Sen inspired alteration shows Arneson’s equal opportunity for welfare to be counterintuitive.¹⁰

As regards equality of resources, Cohen develops his counterexample so that his impaired individual suffers an additional impairment. As Cohen

⁸ See section 2.3

⁹ See section 2.2

¹⁰ Equal opportunity for welfare is, however, counterintuitive because of its recommendations in Dworkin’s Jude case. For according to equal opportunity for welfare, Jude’s new voluntarily developed expensive taste does not qualify for compensation *even though compensation would still leave him with fewer resources than others because his initial tastes were so cheaply satisfied*. See section 2.2

describes him, '[t]here is also something wrong with his arms. He is not less able to move them than most people are: I shall even assume, to make my point more vivid, that he is especially good at moving them. But there is, nevertheless, something seriously wrong with them, and it is this: after he moves them, he suffers severe pain in his arm muscles' (Cohen, 2011a, p. 16). This impairment qualifies for compensation under equal access to advantage, if the impaired individual is not personally responsible for it, and is compensated for by supplying him with an expensive pain relieving medicine. Yet, according to Cohen, this cannot be thought of as compensating for an inequality of personal resources as the impaired individual 'is especially good at moving' his arms. On the contrary, Cohen believes it must be thought of as compensating for a hedonic welfare deficiency for which equality of resources would not compensate. Thus, if our intuition is to compensate, equality of resources appears counterintuitive.

In reply, Dworkin argues that Cohen's counterexample poses no problem for equality of resources. He insists that, '[a] pain-producing infirmity is a canonical example of a lack of personal resources for which equality of resources would, in principle, provide compensation... [I]f the pain that Cohen imagines were serious and, as he also imagines, medicine could relieve it, then a hypothetical insurance agreement would almost certainly provide funds adequate to purchase that medicine' (Dworkin, 2002, p. 297). In other words, Dworkin is adamant that what is being compensated for in Cohen's counterexample is not inequality of opportunity for welfare specified hedonically, but an inequality of personal resources that happens to cause pain and which, because equality of resources is endowment-insensitive, qualifies for compensation via the

hypothetical insurance fund. This fund being the sum of fixed premiums for all based on speculations about what the average individual would insure against if her susceptibility to physical and/or mental impairment were unknown, and which would likely be sufficiently large to provide people such as Cohen's impaired individual with expensive medication.

Cohen maintains that Dworkin's reply is ineffective, on grounds that '[y]ou do not turn a welfare consideration into a resource consideration by appealing to the fact that the source of the illfare in question is a person's physical constitution' (Cohen, 2011d, p. 92). But Dworkin is not guilty of such trickery. All he need do to escape Cohen's counterexample is show, as he succeeds in doing, that equality of resources would not counterintuitively deny compensating the impaired individual. It makes little sense to claim that someone who suffers from severe pain following the use of their arms, even if they can still use their arms, is not physically impaired. But that is what must be claimed for the counterexample to undermine equality of resources. For if an individual suffers from a physical and/or mental impairment through no fault of their own, then they suffer from an inequality of personal resources through no fault of their own, and that is all that need be true for Cohen's impaired individual to qualify for compensation under equality of resources. I therefore conclude that Cohen's counterexample fails to show equality of resources to be counterintuitive.

3.4. As regards compensation claims for expensive tastes and the answers of equal opportunity for welfare and equality of resources, Cohen refers to

Dworkin's examples of Louis and Jude.¹¹ To briefly recap: In the former example, equality of welfare is achieved consistent with equality of wealth. Louis then voluntarily develops an expensive taste for plover's eggs that he cannot satisfy with his current wealth allocation such that he comes to suffer from inequality of welfare. To re-establish equality of welfare requires that wealth be redistributed from those with cheap tastes to Louis. In the latter example, equality of welfare is achieved consistent with inequality of wealth because of Jude's cheap tastes. After reading Hemmingway, Jude then develops an expensive taste for bullfighting that he cannot satisfy with his current wealth allocation such that he comes to suffer from inequality of welfare. To re-establish equality of welfare requires a redistribution of wealth, but not one which allocates Jude more wealth than others because his initial tastes were so cheap. If we are inclined to compensate Jude but not Louis, because in claiming compensation Louis asks for more than his fair share of wealth whereas Jude does not, then, our intuitions are supportive of equality of resources.

With respect to Louis' compensation claim, just as equal opportunity for welfare denies Louis compensation not because he asks for more than his fair share of resources but because he voluntarily developed his expensive taste¹², equal access to advantage denies Louis compensation because he voluntarily developed his expensive taste and because he could unlearn it. As Cohen says, 'I distinguish among expensive tastes according to whether or not their bearer can reasonably be held responsible for them. There are those which he could not have helped forming and/or could not now unlearn, and then there are those for which,

¹¹ See section 2.2

¹² See section 2.2

by contrast, he can be held responsible, because he could have forestalled them and/or because he could now unlearn them' (Cohen, 2011a, p. 21). Thus, Cohen argues that we can explain our intuition to deny Louis compensation without appealing to fair shares in terms of resources, and that we should reject equality of resources because it 'wrongly refuses compensation for involuntary expensive tastes, and [because] it does not refuse compensation for voluntary ones for the right reason' (Cohen, 2011a, p. 21).

With respect to Jude's compensation claim, as noted previously, equal opportunity for welfare denies Jude compensation for his expensive taste if he developed it voluntarily, whereas equality of resources considers the voluntariness of Jude's expensive taste irrelevant and simply grants him his fair share of resources.¹³ Rejecting both answers, Cohen argues: '*Pace* equality of opportunity for welfare, I see no manifest injustice in Jude's getting the funds he needs to travel to Spain [even though he could have forestalled and/or unlearn his expensive taste for bullfighting]. He then still has fewer resources than others, and only the same welfare, so equality of access to advantage cannot say, on that basis, that he is overpaid. But, *pace* equality of resources, it seems not unreasonable to expect Jude to accept some deduction from the normal resource stipend because of his fortunate high ability to get welfare out of resources' (Cohen, 2011a, p. 23).

Cohen's answer to Jude's compensation claim reflects his conceptualization of advantage. As noted previously, Cohen says that advantage includes 'both resources and welfare, and perhaps other things too, in an open-

¹³ See section 2.2

ended conception,' and that advantage should be understood as 'a heterogeneous collection of desirable states of the person reducible neither to his resources bundle nor to his welfare level.'¹⁴ Jude therefore enjoys equal access to advantage when his access to advantage score, which is the desirable states of the person he has access to in light of the sum of his resources, welfare and other things, is the same as the access to advantage scores of others. To accurately know whether Jude qualifies for compensation under equal access to advantage thus requires an index of desirable states of the person and their relative worth; otherwise Jude's access to advantage score cannot be summed and compared against the scores of others. Although Cohen provides no such index, he makes a rough guess that for Jude to enjoy equal access to advantage the sum of his resources and welfare would be consistent with granting him compensation whilst denying him equality of resources because of his otherwise cheap tastes.

Earlier I noted that my intuitions vis-à-vis Jude are supportive of equality of resources.¹⁵ I said that the voluntariness of Jude's expensive taste is beside the point, and that what matters is that he asks for no more than his fair share of resources. I also noted that when returning to the problem of expensive tastes in the evaluation of equal access to advantage, it would become evident that Dworkin believes the relevant intuition is supported by reasons as to why the distinction between voluntary and involuntary expensive tastes is unsustainable and why compensating for expensive tastes is to treat people as alienated from their personalities. These reasons come to the fore in Dworkin's critique of how Cohen and others respond to the problem of expensive tastes, and arguably show

¹⁴ See section 3.2

¹⁵ See section 2.2

that, even if Cohen were to construct an index of desirable states of the person to which people should have equal access without deriving it from a perfectionist theory of the good-life, that is, the problem of indexing and the problem of perfectionism aside, we ought not to embrace equal access to advantage.

Dworkin argues, rightly in my view, that the distinction between voluntary and involuntary expensive tastes, to which both equal opportunity for welfare and equal access to advantage appeal in response to the problem of expensive tastes, is unsustainable. This is because our tastes are the product of background tastes that are constitutive of our un-chosen personalities. Cohen's illustrative example of an involuntary expensive taste is that of Paul the photographer (Cohen, 2011a, pp. 20-21). Paul does not choose to develop a liking for photography; it just so happens that he gains preference-satisfaction from it yet cannot afford to pursue it as a hobby. He therefore suffers from unequal access to advantage and, unlike Louis who voluntarily developed his expensive taste, qualifies for compensation. But, so Dworkin argues, Louis developed his expensive taste because it seemed appropriate given his wealthy upbringing; it is a consequence of background tastes that are constitutive of his un-chosen personality. Therefore, Louis' expensive taste for plover's eggs 'is no more "traceable" to choice than the photographer's taste for photography' (Dworkin, 2002, p. 289). As the distinction between voluntary and involuntary expensive tastes is unsustainable, Cohen cannot explain his refusal to compensate Louis by appeal to it.

How might equal access to advantage be revised in light of the unsustainability of the distinction between voluntary and involuntary expensive

tastes? As noted in the second paragraph of this sub-section, Cohen distinguishes between expensive tastes which people could not have helped forming and/or could not unlearn (and which therefore qualify for compensation because the bearer cannot be held personally responsible for any relative disadvantage they incur) and expensive tastes which people could have forestalled and/or could unlearn (and which therefore do not qualify for compensation because the bearer can be held personally responsible for any relative disadvantage they incur). This distinction is not completely undone by the un-sustainability of the distinction between voluntary and involuntary expensive tastes. Despite all expensive tastes being involuntary, there remains Cohen's distinction between those which can and cannot be unlearned. If Louis' expensive taste for plover's eggs can be unlearned whereas Paul's expensive taste for photography cannot, it is open to Cohen to deny Louis compensation but grant Paul compensation for that reason.

It is important to note, however, that Cohen later revises his view by drawing a distinction between *brute* and *judgmental* tastes. Whereas judgmental tastes reflect one's value judgments, brute tastes do not. As regards expensive judgmental tastes, Cohen later reports: 'I no longer think that the mere fact that people chose to develop and/or could now school themselves out of an expensive judgmental taste means that they should pick up the tab for it, and that is *precisely* because they *did* and *do* identify with it, and therefore cannot *reasonably* be expected to have not developed it or to rid themselves of it' (Cohen, 2011d, p. 88). He therefore revises the relevant distinction so that it distinguishes between expensive tastes which people 'could not have helped forming and/or could not now unlearn *without violating their own judgment*, and

then there are those for whose cost, by contrast, they can be held responsible, because they could have forestalled their development, and/or because they could now quite readily unlearn them, *without violating their own judgment*' (Cohen, 2011d, p. 88, emphasis added). Revising that distinction once again, in light of the un-sustainability of the distinction between voluntary and involuntary expensive tastes, there remains a distinction between expensive tastes which people cannot unlearn without violating their valuational judgments, and expensive tastes which people can unlearn without violating their valuational judgments. Thus, if Louis' expensive taste for plover's eggs can be unlearned without violating his valuational judgments whereas Paul's expensive taste for photography cannot, it is open to Cohen to deny Louis compensation but grant Paul compensation for that reason.

In addition to the un-sustainability of the distinction between voluntary and involuntary expensive tastes, Dworkin argues that we should deny compensation for expensive tastes not only because of the counterintuitive implications already mentioned, but because to not hold people responsible for their personalities and by extension for their tastes would be contrary to our everyday ethics. Whenever we make decisions that affect the course of our lives, our personalities, to a greater or lesser extent, influence the decisions we make. Yet we do not consider the decisions we make to be a matter of brute luck. That, as Dworkin says, 'would be to treat ourselves as dissociated from our personalities rather than identified with them... It would be bizarre for someone to say that he should be pitied, or compensated by his fellow citizens, because he had the bad luck to have decided that he should help his friends in need, or that

Mozart is more intriguing than hip-hop, or that a life well lived includes foreign travel' (Dworkin, 2002, p. 290).¹⁶

Cohen finds Dworkin's alienation argument 'entirely unpersuasive, since the relevant bad luck does not lie in the mere *having* of the preference... [On the contrary,] the person regards the relevant taste as bad luck *only* in light of its price. And people can certainly without any self-misrepresentation or incoherence ask for compensation for (what might be, in every relevant sense) the *circumstance* that their taste is expensive' (Cohen, 2011d, p. 93). For example, '[i]t might indeed be absurd for Mozart-lovers to regard their love for Mozart as *itself* bad luck. But there is nothing absurd, there is no dissociation from their own personality, when they express regret that Mozart CDs are more expensive than Madonna CDs' (Cohen, 2011d, p. 94).

Cohen is right, except where one's tastes are merely for expensive things, that the relevant bad luck lies not in one's having the preference but in the circumstance that her preference is priced expensively by the market. However, Dworkin's alienation argument can be interpreted such that it is not undermined by appeal to this truth. Clayton (2000) and Williams (2002) both interpret Dworkin's alienation argument in terms of an endorsement test, whereby if one endorses her tastes because she deems them to be constitutive of a valuable life, then she ought to bear the costs of those tastes. Williams refers to it as *the continuity test*, as it effectively insists on continuity 'between ethical judgments about what makes one's life go well and distributive judgments about the existence of inequality' (Williams, 2002, p. 387). For example, if Paul believes

¹⁶ Similarly, Rawls argues that to compensate for expensive tastes is to 'presuppose that citizens' preferences are beyond their control..., [and to regard them] as passive carriers of desires' (Rawls, 1982, p. 169).

that a valuable life involves the expensive pursuit of photography, such that he is unwilling to switch places with Fred who believes that a valuable life involves the cheap pursuit of fishing, then, no relevant inequality obtains despite Fred's greater opportunity for preference-satisfaction. To claim otherwise, so the continuity test holds, would be discontinuous with Paul's judgments as to what makes for a valuable life.¹⁷

In reply to Clayton and Williams, Cohen interprets the continuity test as requiring that one must consider her life all things considered worse than those of relevant others for an unjust inequality to obtain. Accordingly, so Cohen argues, it is inconsistent with equality of resources because Dworkin does not require that condition to be satisfied for an unjust inequality of resources to obtain; a claimant need not consider her life all things considered worse than those of relevant others to be granted compensation from the hypothetical insurance fund. Why, then, should the continuity test be satisfied before compensating for unequal access to advantage? As Cohen argues, 'Dworkin has no monopoly on the idea that you can be worse off precisely in the justice-sensitive respect without thinking yourself worse off *tout court*' (Cohen, 2011d, p. 114).

But, Cohen's reply to Clayton and Williams oversimplifies the continuity test. It does not require that one must consider her life all things considered worse than those of relevant others for an unjust inequality to obtain. Rather, the continuity test requires that one must believe that the opportunities of relevant others are more valuable than her own for an unjust inequality to obtain; it requires that one must be able to claim in good-faith that relevant others are

¹⁷ Dworkin himself presses a challenge to Cohen's bad price luck argument which appears to mirror the continuity test (Dworkin, 2004, p. 345).

better off in terms of opportunities consistent with the claimant's beliefs as to what makes for a valuable life.

To illustrate, if Paul believes that one's life has more value the greater one's opportunities to satisfy her subjective preferences, then, Paul can claim in good-faith that he is relatively disadvantaged compared to Fred in virtue of his bad price luck. His claim for compensation would then pass the continuity test because his beliefs as to what makes for a valuable life would be continuous with judgments about the existence of inequality. But, as will often be true, Paul might not believe that one's life has more value the greater one's opportunities to satisfy her subjective preferences. For example, he might instead believe that one's life has more value the greater one's opportunities to pursue photography but reject the idea that fishing is in any way constitutive of a valuable life. If this variant of Paul were to claim compensation his claim would fail the continuity test, because his claim to be relatively disadvantaged would be discontinuous with his judgments about what makes for a valuable life; Paul cannot claim in good-faith that Fred is better off in terms of opportunities consistent with his beliefs as to what makes for a valuable life.

The revised version of equal access to advantage developed in light of the un-sustainability of the distinction between voluntary and involuntary expensive tastes, compensates for expensive tastes that people cannot unlearn without violating their valuational judgments, regardless of whether the bearer considers herself relevantly worse off. Thus, although Cohen is right that there is nothing absurd, that there is no dissociation from one's personality, when one expresses regret that her taste is expensive, it is absurd to compensate one for her expensive

taste *if* she does not, as a result, consider herself worse off in terms of opportunities to pursue that which she deems constitutive of a valuable life. Why should we compensate one for bad price luck when she does not consider herself relevantly worse off as a result? Without a satisfactory answer to that question, equal access to advantage remains susceptible to the problem of expensive tastes.

4. Conclusion

In summary, then, equal access to advantage is susceptible to a variety of problems that give us reason not to embrace it as the appropriate metric of egalitarian interpersonal comparison. As regards the problem of indexing, because Cohen specifies advantage as some set of desirable states of the person that one has access to in light of her resources, welfare and perhaps other things, the ability to draw interpersonal comparisons requires the creation of an index of those valuable states of the person and their relative worth so that each person's access to advantage score can be summed and compared against the scores of others. Consistent with a subjective theory of value this will prove difficult, as the number of valuable states of the person will be extensive whilst their value will differ, sometimes greatly, between individuals. Add to this the fact that acquiring the necessary information with respect to people's value judgments is unfeasible, and a subjective index version of equal access to advantage is implausible. If, on the other hand, the index is based on an objective theory of value derived from a perfectionist theory of the good-life, equal access to advantage becomes susceptible to the problem of perfectionism: equalizing access to a list of states of the person whose value is derived from a perfectionist

theory of the good-life conflicts with justificatory neutrality, because the list of states of the person to which access is being equalized cannot be justified over an alternative list without appeal to the relevant perfectionist theory. Those who favor an objective list version of equal access to advantage, but who also believe the state ought not act in order to help some ways of life over others, must therefore provide a non-perfectionist explanation of from where their objective list derives its value. Absent a satisfactory explanation equal access to advantage remains susceptible to the problem of indexing.

As regards the problem of expensive tastes, we saw that in cases where equal opportunity for welfare is achieved consistent with inequality of resources, because Jude, in virtue of his cheap tastes, requires fewer resources than others for it to obtain, equal opportunity for welfare counterintuitively denies Jude compensation for his new voluntarily developed expensive taste, even though compensation would still leave him with fewer resources than others because his initial tastes were so cheaply satisfied. To know whether Jude qualifies for compensation under equal access to advantage requires a solution to the problem of indexing; otherwise Jude's access to advantage score cannot be summed and compared against the scores of others. Cohen compensates Jude only because he makes a rough guess that for Jude to enjoy equal access to advantage the sum of his resources and welfare (and perhaps other things) would be consistent with granting him compensation for his new voluntarily developed expensive taste whilst denying him equality of resources because of his otherwise cheap tastes.

As it shows equal opportunity for welfare to have implausible implications, whilst again highlighting the problem of indexing for equal access

to advantage, the case of Jude is another point against embracing equal access to advantage; it supports a distributive principle that grants people their fair share of resources, as opposed to one that compensates for expensive tastes in seeking to realize equal opportunity for welfare or a resource-welfare hybrid such as advantage. The appeal of the continuity test further strengthens the argument in favor of denying compensation for expensive tastes, at least in most cases. For although Cohen is right that the bearer of an expensive taste suffers from bad price luck, as opposed to bad preference luck, this fact alone is insufficient reason to compensate for expensive tastes. It ought additionally to be true that the bearer of an expensive taste is able to claim in good-faith, as a consequence of her bad price luck, that others are better off in terms of opportunities consistent with her beliefs as to what makes for a valuable life. Otherwise, we somewhat absurdly compensate people for expensive tastes even when they do not consider themselves relevantly worse off as a result. That equal access to advantage compensates for expensive tastes (when the claimant's access to advantage score is not equal to that of others) regardless of whether the bearer's claim to compensation passes the continuity test, is yet another reason, in addition to the problem of indexing and the related problem of perfectionism, as to why we ought not to embrace equal access to advantage.

With respect to my aim of clarifying and evaluating Cohen's positive contribution to the question of what type of society we ought to seek, this chapter has served to clarify and evaluate the first view I identify with his positive contribution; namely, that the appropriate metric of egalitarian interpersonal comparison is equal access to advantage. In evaluating this view, I have argued

that the appropriate metric of egalitarian interpersonal comparison is not equal access to advantage, but rather an alternative luck egalitarian principle of equality of opportunity where opportunities are specified in terms of resources. For reasons not discussed in this chapter, however, I do not fully embrace Dworkin's equality of resources, because whereas he is a deontic egalitarian, and not therefore committed to the claim that equality has non-instrumental value, I argue in Chapter 3 that a luck egalitarian social state of affairs has non-instrumental value (in addition to instrumental value).¹⁸ Moreover, in Chapter 4 I argue that luck egalitarianism ought to be constrained by a sufficiency qualification. Before making these arguments, however, I now turn to clarifying and evaluating the second view I identify with Cohen's positive contribution to the question of what type of society we ought to seek.

¹⁸ See Chapter 3, section 3

Chapter 2

The Egalitarian-Paretian Ethos

1. Introduction

The focus of this chapter is the second view I indentify with Cohen's positive contribution to the question of what type of society we ought to seek. This view is that, in principle, equality of opportunity, Pareto-efficiency and freedom of occupational choice are co-obtainable when people's occupational choices are informed by a commitment to equality of opportunity in combination with a commitment to produce Pareto-efficiently both in terms of productive capacity and occupational choice.

Evidence of how Cohen understands the relationship between equality of opportunity, Pareto-efficiency and freedom of occupational choice, in principle, is to be found in *Rescuing* Part I. As part of his attempt to rescue equality from Rawls, or, to be more accurate, from *the incentives argument* for inequality which is commonly viewed as consistent with *the difference principle*, Cohen presses the claim, which operates at the level of fundamental principles and so abstracts from social facts, that equality of opportunity and Pareto-efficiency are co-obtainable if and when the productively talented voluntarily choose to work at their upmost capacity for reward consistent with equality of opportunity. *The freedom objection* to this claim is that, even granting its truth, Cohen must nevertheless solve *the equality-Pareto-freedom trilemma*:

The equality-Pareto-freedom trilemma: Any two of equality of opportunity (however specified¹), Pareto-efficiency and freedom of occupational choice may co-obtain, but all three cannot, as to fill occupations Pareto-efficiently whilst realizing equality of opportunity would require forcing people who prefer different occupations for reward consistent with equality of opportunity to fill those occupations on which the realization of Pareto-efficiency depends; note that, absent freedom of occupational choice, for equality of opportunity and Pareto-efficiency to co-obtain it still requires people to produce Pareto-efficiently, but that it leaves open the possibility of forcing them to.

In response to the trilemma Cohen offers *the ethical solution*:

The ethical solution: Equality of opportunity, Pareto-efficiency and freedom of occupational choice are co-obtainable when occupational choice is informed by a commitment to equality of opportunity in combination with a commitment to produce Pareto-efficiently whether in terms of productive capacity or occupational choice (*the egalitarian-Paretian ethos*).

In principle, then, Cohen maintains that equality of opportunity, Pareto-efficiency and freedom of occupational choice are co-obtainable when the choices of the productively talented are informed by the egalitarian-Paretian

¹ Cohen's critique leaves 'opportunity' unspecified; he says that the "equality of what?" question does not matter because the argument he targets 'is for inequality no matter what conception of equality is embraced' (Cohen, 2008, p. 94, n. 21).

ethos. As my concern is with what type of society we ought to seek, I am more concerned with what we ought to do in practice than with what is possible in principle. I therefore evaluate whether the ethical solution succeeds not only when we abstract from social facts, but also when we recognize those social facts that are particularly relevant.

As Cohen allows for a prerogative to pursue self-interest to a reasonable extent, which effectively allows many to depart from the egalitarian-Paretian ethos on which the ethical solution relies, I argue that the ethical solution succeeds only if either (i) we deny the prerogative or (ii) people do not exercise it with respect to occupational choice. Cohen is against (i) and so, on his view, the ethical solution succeeds only if (ii). But the probability that (ii) will not occur, that many will exercise their prerogative with respect to their choices about how hard to work and what occupations to fill, has the consequence that we must choose between either the sacrificing or compromising of equality of opportunity, Pareto-efficiency, or freedom of occupational choice.

Although the failure of the ethical solution in practice is no critique of Cohen, because he intends it to operate at the level of fundamental principles where we abstract from social facts, it is important to clarify that, in practice, the type of society we ought to seek when taking into account considerations pertaining to equality of opportunity, Pareto-efficiency and freedom of occupational choice does require either the denial of freedom of occupational choice, which virtually nobody would endorse², or one of equality of opportunity or Pareto-efficiency to be sacrificed or compromised. With this clarification

² Cohen labels the denial of freedom of occupational choice 'Stalinist' (Cohen, 2008, p. 186).

made we are better placed to understand why Cohen ultimately concedes that the state should often compromise equality of opportunity in the name realizing Pareto-efficiency; the third view I identify as part of his positive contribution to the question of what type of society we ought to seek, and the subject of Chapter 3.

Despite my concerns being largely practical I additionally note that even at the level of fundamental principle, the success of the ethical solution depends on whether the egalitarian-Paretian ethos is a requirement of distributive justice and on how we conceptualize freedom. For as Paula Casal argues, on a positive conception of freedom, where freedom of occupational choice requires an adequate range of acceptable options, and the egalitarian-Paretian ethos is, as Cohen argues, a requirement of distributive justice, the ethical solution fails because one is not relevantly free when their occupational choices are limited to two options and one of them is unjust.

2. The background

2.1. The equality-Pareto-freedom trilemma comes in to view following Cohen's attempt to rescue equality from Rawls, with his proposed solution drawing on claims made therein. As such, clarification of the relevant claims is required prior to my pursuit of the above advertised argument. That is the aim of this section. It is not my intention to provide a summary of Cohen's critique that accounts for all of its particular nuances, nor, as noted in the Introduction, is it my intention to

assess its validity with respect to Rawls³; I seek only to clarify that which requires clarification as regards my subject matter.

2.2. Cohen's attempt to rescue equality from Rawls in *Rescuing* Part I is primarily devoted to challenging the incentives argument for inequality *as a claim about distributive justice*.

The incentives argument

1. Inequalities are unjust unless they are necessary to make the worst off people better off, in which case they are just.
2. Unequalizing incentive payments to productive people *are* necessary to make the worst off people better off.
3. Therefore, unequalizing incentive payments are just.

(Cohen, 2008, p. 19)

Cohen views his critique of the incentives argument as an attempt to rescue equality from Rawls because the difference principle is commonly interpreted as permitting unequalising incentive payments. According to the difference principle, after the lexically prior principles of equal basic liberties and fair equality of opportunity have been secured, distributive justice requires that 'social and economic inequalities... be to the greatest benefit of the least-advantaged members of society' (Rawls, 2001, pp. 42-43). The difference principle therefore mirrors premise 1 of the incentives argument to the extent that

³ See Introduction, section 4.3

both view the justice of an inequality as being dependent on it benefiting the worst-off; although the difference principle is more demanding in that the justice of an inequality is dependent not only on it benefiting the worst-off but on it being to their greatest benefit. That stricter condition aside, if unequalising incentive payments to ‘the talented’⁴ are necessary to benefit the worst-off, the difference principle is commonly thought to permit unequalising incentive payments.

The reasoning behind premise 2 of the incentives argument is that large rewards motivate the talented to produce more than they otherwise would, thus unequalising incentive payments to the talented result in a greater sum total of resources, which allows for greater absolute amounts to be distributed to the worst-off. Hence, unequalising incentive payments to the talented are necessary to make the worst-off better off (premise 2). Cohen’s initial strategy is not to reject that reasoning per se, but to argue that unequalising incentive payments are necessary only because the talented make them necessary, and moreover, that they would struggle to justify making them necessary to the worst-off.

The talented make it true that large rewards motivate them to produce at their upmost capacity, Cohen argues, because of a disposition not to work at their upmost capacity unless they receive large rewards. Thus, unequalising incentive payments are not strictly necessary to improve the situation of the worst-off, because their necessity is merely a consequence of the talented choosing to vary their productivity relative to their reward (Cohen, 2008, pp. 48-51). This claim, however, rests on a psychological assumption. For as Cohen notes, Samuel

⁴ Understood merely as those whose abilities are valued by the market and on whose labor the realization of Pareto-efficiency is dependent.

Scheffler put it to him that unequalising incentive payments ‘might elicit motives that could not “be summoned at will,” that nothing else would induce, and that would enable agents to perform better than they otherwise could’ (Cohen, 2008, p. 52). Despite this possibility, Cohen believes that people do possess free will to an extent that the relevant disposition is what makes unequalising incentive payments necessary to improve the situation of the worst-off (Cohen, 2008, pp. 52-53).

The talented would struggle to justify making unequalising incentive payments necessary, so Cohen argues, because absent controversial appeals to entitlement and desert⁵ the sort of justifications they might offer would fail *the interpersonal test*. According to the interpersonal test, if the person or group to whom a justificatory argument is presented can offer a valid rejection, then the argument fails to justify the actions, or intended actions, of the person or group presenting the argument (Cohen, 2008, p. 42).⁶

To illustrate, Cohen imagines that the large rewards enjoyed by the talented have been reduced due to a rise in the top rate of income tax from 40 to 60 percent.⁷ Against this tax rise the talented say to the worst-off: “Public policy should make the worst off people (in this case, as it happens, you) better off. If the top tax goes up to 60 percent, we shall work less hard, and, as a result, the position of the poor (your position) will be worse. So the top tax on our income should not be raised to 60 percent” (Cohen, 2008, p. 59). To that, the worst-off can reply: “Given that you would still be much better off than we are if you

⁵ Their controversial nature having to do with the fact that people’s circumstances are always, in part, a matter of brute luck.

⁶ As regards the interpersonal test and *justificatory community*, see Chapter 4, section 2.4.

⁷ The reverse of Nigel Lawson’s 1988 income tax cut to which Cohen refers in *Rescuing* Chapter 1.

worked as you do now at the 60 percent tax, what justifies your intention to work less if the tax rises to that level?" (Cohen, 2008, p. 60). Absent controversial appeals to entitlement and desert the talented appear unable to answer that question. They cannot answer with premise 2 of the incentives argument; they cannot claim that large rewards are necessary to make the worst-off better off, because it is merely their disposition to vary their productivity relative to their reward that makes it necessary. Thus, if Cohen is right that premise 2 of the incentives argument is true only because the talented make it so, the incentives argument fails the interpersonal test when offered as a justificatory argument by the talented to the worst-off.

Considering alternative justificatory arguments the talented might put to the worst-off, Cohen ponders, again as a result of comments from Scheffler, whether they might argue that, 'only an extreme moral rigorist could deny that *every person has a right to pursue self-interest to some reasonable extent* (even when that makes things worse than they need be for badly off people)' (Cohen, 2008, p. 61).⁸ According to Cohen, denial of this *personal prerogative* would be tantamount to viewing people as 'nothing but slaves to social justice' (Cohen, 2008, p. 10). Hence, he embraces it as a caveat. He does not consider it to undermine his critique, as in making it true that unequalising incentive payments are necessary to improve the situation of the worst-off, he believes the talented exceed its reasonability threshold. Rather than pursuing self-interest to a reasonable extent, he believes the talented are guilty of pursuing self-interest to an unreasonable extent (Cohen, 2008, pp. 61-62).

⁸ The italicized principle affirms Scheffler's 'agent-centered prerogative.' See Scheffler, 1985, p. 418.

The personal prerogative: every person has a right to pursue self-interest to some reasonable extent (even when that makes things worse than they need be for badly off people).

As regards Rawls, what matters is the claim that the talented make premise 2 of the incentives argument true. If unequalising incentive payments to the talented are not strictly necessary to improve the situation of the worst-off, then premise 2 is false and the incentives argument collapses. A great deal depends, however, on how we interpret the necessity condition of the incentives argument, which, Cohen views as also being implied by the difference principle. If we interpret ‘necessity’ as intention-independent and unequalising incentive payments are necessary to improve the situation of the worst-off only because of the talented’s *intention* to vary their productivity relative to their reward, then, the difference principle does not permit unequalising incentive payments; Cohen calls this ‘the strict difference principle.’ If, however, we interpret ‘necessity’ as being intention-relative, then, despite unequalising incentive payments not being strictly necessary to benefit the worst-off, the difference principle permits unequalising incentive payments; Cohen calls this ‘the lax difference principle’ (Cohen, 2008, pp. 68-69).

Cohen believes there is evidence in support of both the strict and lax interpretations of the difference principle in Rawls’s writings. However, he maintains that if ‘people in the society it governs... are concerned to ensure that their own conduct is just in the sense defined by the principle, then what they

comply with is the principle in its strict interpretation' (Cohen, 2008, p. 69). In other words, if people truly believe in the difference principle, then when relevant, their choices will be informed by a belief that social and economic inequality is just only when it is to the greatest benefit of the worst-off. As such, if the choices of the talented are informed by a belief in the difference principle, and there is a feasible distribution that is of greater benefit to the worst-off than that which results from unequalising incentive payments, the talented would choose not to make unequalising incentive payments necessary.

2.3. Is there a feasible distribution that benefits the worst-off to a greater extent than that which results from unequalising incentive payments? Cohen's answer to this question is evident in his critique of *the Pareto argument*.⁹ The following breakdown is consistent with Cohen's explanation of it.

The Pareto argument:

1. Equality of opportunity requires the elimination of all morally arbitrary inequalities such that differences of outcome do not reflect differences of natural endowment and/or socio-economic circumstance, but only differences of taste and/or choice.
2. Equality of opportunity is *prima facie* just.
3. Inequalities of opportunity may nevertheless be just in virtue of their consequences.

⁹ This argument is Brian Barry's reconstruction of Rawls's argument for the difference principle. See Barry, 1989, pp. 213-234

4. Inequalities of opportunity *are* just when they result in a *strong* Pareto-improvement.¹⁰

(Cohen, 2008, p. 89)

The Pareto argument is clearly not Rawls's official argument for the difference principle, as in omitting the original position it fails to capture his contractualism. Rather than think inequality of opportunity is distributively just simply because it results in a strong Pareto-improvement on equality, Rawls thinks it distributively just *when and because it is sanctioned by the worst-off*. As he says in *Restatement*, '[t]he parties would accept inequalities... when these work effectively to improve everyone's situation starting from an equal division. This suggests the difference principle: taking equal division as the benchmark, those who gain more are to do so only on terms acceptable to those who gain less, and in particular those who gain least' (Rawls, 2001, p. 123).¹¹ Furthermore, because it requires that 'social and economic inequalities... be to the greatest benefit of the least-advantaged members of society' (Rawls, 2001, pp. 42-43), the difference principle picks out a particular Pareto-improvement from the set of feasible distributions. For example, if we start at (i) 10, 10, and the feasible alternatives are (ii) 11, 15, and (iii) 12, 14, both of the feasible alternatives represent strong Pareto-improvements on (i), but, all else being equal¹², the

¹⁰ A *strong* Pareto-improvement occurs when a distributive move makes everyone better off. A *weak* Pareto-improvement occurs when a distributive move makes at least one individual better off but no individual worse off.

¹¹ The same explanation appears in the revised edition of *Theory* (Rawls, 1999, p. 131).

¹² The difference principle does not require continual economic growth, and so acting consistently with it does not always require the state to select the distribution from the feasible set that is to the greatest benefit of the least advantaged. See Chapter 3, section 2.3

difference principle says that justice requires a move to (iii), because (iii) is to the greatest benefit of the least advantaged.

Cohen recognizes that the Pareto argument is not Rawls's official argument for the difference principle, but nevertheless sees it as warranting critique as it 'advance[s] the Rawlsian purpose... to reconcile certain inequalities with justice' (Cohen, 2008, p. 88). Cohen says that the essence of his objection to the Pareto argument, 'is that consistent adherence to the rationale of its first move puts its second move in question: ...that anyone who believes that, because the possible sources of inequality are morally arbitrary, an initial equality [of opportunity] is *prima facie* just has no reason to believe that the recommended Pareto improvement preserves justice, even if that improvement should be accepted on other grounds' (Cohen, 2008, pp. 89-90). In other words, Cohen rejects the idea that inequalities of opportunity deemed *prima facie* unjust can subsequently be deemed just simply because they happen to benefit the worst-off; such inequalities of opportunity might be desirable all things considered, but they nevertheless remain unjust because of their moral arbitrary source.

What is most relevant as regards the trilemma, however, is a claim made in his critique of the Pareto argument that serves to answer the question raised four paragraphs back; namely, is there a feasible distribution that benefits the worst-off to a greater extent than that which results from unequalising incentive payments? Cohen claims that if a strongly Pareto-superior but unequal alternative to equality of opportunity is feasible because of unequalising incentive payments, then so too is a strongly Pareto-superior alternative that preserves equality of opportunity and benefits the worst-off to a greater extent.

To illustrate, let us imagine the distribution which the Pareto argument takes as the starting point in the search for distributive justice, namely, a distribution that is consistent with equality of opportunity. For simplicity of argument, let us further imagine that the society in question consists of only two people, *A* and *B*, who happen to share the exact same tastes and/or choices so that in this instance equality of opportunity results in equality of outcome (e.g., D1: *A* 5, *B* 5). However, *A* happens to be naturally endowed with greater productive talent than *B*. Thus, so advocates of the incentives argument would press, a strong Pareto-improvement on equality of opportunity is feasible when unequalising incentive payments are made to *A*; rather than dividing the sum total of social product equally, allowing *A* to retain a larger share would motivate her to produce more than she otherwise would (e.g., 4 extra units), thus resulting in a greater sum total that in turn allows for greater absolute amounts to be distributed to *B* (e.g., D2: *A* 8, *B* 6). But, so Cohen would argue, if *A* were to produce at her upmost capacity for equal reward, that is, whilst still dividing the sum total of social product equally with *B*, a strong Pareto-improvement on D1 that achieves the same sum total as D2, but which preserves the equality of opportunity of D1 and benefits the worst-off to a greater extent than D2, is also feasible (e.g., D3: *A* 7, *B* 7).¹³

This claim is most relevant as regards the trilemma because it holds, prior to freedom of occupational choice being brought into play, that equality of opportunity and Pareto-efficiency are co-obtainable; they are co-obtainable when the talented produce at their upmost capacity for reward consistent with equality

¹³ For Cohen's more complex wage rate illustration, see Cohen, 2008, pp. 97-101.

of opportunity. As with his critique of the incentives argument, this claim is also susceptible to Scheffler's thought that unequalising incentive payments might motivate people to an extent that free will cannot, such that the co-obtaining of equality of opportunity and Pareto-efficiency is unfeasible. Yet, as noted previously, Cohen believes people do possess free will to the required extent.

What Cohen is willing to concede, is that the realization of Pareto-efficiency may require the talented to undertake labor that is sufficiently burdensome to justify allocating them greater rewards. When that is the case, Cohen considers the appropriate level of greater reward to be compensatory, so that once labor burden is factored into the metric of egalitarian interpersonal comparison no inequality obtains. In what he calls 'the standard case,' however, the realization of Pareto-efficiency does not require the talented to undertake especially burdensome labor. Rather, Cohen thinks their labor tends to be more pleasant than that of others. In the standard case, then, Cohen is adamant that *'there is no reason for an egalitarian to regard D2 as acceptable, and every reason for him to recommend D3'* (Cohen, 2008, p. 105).

2.4. Cohen seeks a fatal blow against Rawls's apparent endorsement of the incentives argument by moving to argue that distributive justice requires not only coercive rules but also an ethos of distributive justice that informs people's choices within those rules. If that is true, then even accepting the difference principle as a principle of distributive justice (which, in light of his parameters for fundamental principles of justice, Cohen does not¹⁴), it would fail to permit

¹⁴ See Introduction, sections 2.2 and 4.3

unequalising incentive payments because distributive justice would then require the talented to practice the strict difference principle. It would require that the talented, whose relevant choices would be informed by an ethos whose content reflects *justice as fairness* (Rawls's principles of justice), refrain from making the receipt of unequalising incentive payments necessary to benefit the worst-off when the resulting distribution is not that from the feasible set which is to their greatest benefit. For if they were to choose otherwise, they would be making a choice contrary to what the difference principle informs them.

At this point, an important clarification should be made. To act consistently with a belief that distributive justice requires social and economic inequality to be to the greatest benefit of the worst-off, does not require one to produce at their upmost capacity for reward consistent with equality of opportunity. To see this, imagine that unequalising incentive payments are offered to the talented. Acting in accordance with the strict difference principle, the talented refuse the offered incentives in favor of reward consistent with equality of opportunity. But, rather than produce at their upmost capacity, the talented choose to produce at a more relaxed pace for no reason other than a preference for a more relaxed working life. As a consequence, the realized sum total of social product is Pareto-inefficient; we might imagine that the above D1 is realized instead of D3. Nothing about the talented's behavior here contradicts a belief that distributive justice requires social and economic inequality to be to the greatest benefit of the worst-off, as they are not guilty of creating any such inequality. For their behavior to be contradictory the talented would have to believe in a duty to produce Pareto-efficiently. Whether Cohen incorrectly thinks

that the strict difference principle implies such duty is unclear. What is clear, however, and as shall become evident later, is that the content of the ethos of distributive justice on which Cohen's proposed solution to the trilemma relies does include a belief in a duty to produce Pareto-efficiently.

To any suggestion that justice as fairness should inform people's choices within coercive rules, Rawlsians will likely press the *basic structure objection*. According to the basic structure objection, the choices people make within the coercive structure, including those that are not to the greatest benefit of the worst-off, are irrelevant from the perspective of justice as fairness, because they occur within and do not determine the basic structure of society (Cohen, 2008, p. 124).

According to Rawls, the basic structure, understood as society's political constitution and its principal social and economic arrangements, is the primary subject of justice:

The basic structure is the primary subject of justice because its effects are so profound and present from the start. The intuitive notion here is that this structure contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affect men's initial chances in life; yet they

cannot possibly be justified by an appeal to the notions of merit or desert. It is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice must in the first instance apply. These principles, then, regulate the choice of a political constitution and the main elements of the economic and social system.

(Rawls, 1999, p. 6)

Despite the qualifications ‘primary subject’ and ‘first instance’ appearing to suggest that justice as fairness might apply beyond the basic structure, this passage is commonly interpreted as evidence for its principles solely regulating the basic structure. This reading is reinforced by Rawls’s later insistence that as a consequence of ‘the fact of reasonable pluralism,’ justice as fairness should be understood as ‘a political conception... designed for the special case of the basic structure of society and not... as a comprehensive moral doctrine’ (Rawls, 2001, p. 19).¹⁵

Cohen’s ‘fundamental’ reply to the basic structure objection is fairly straightforward. Either we interpret the basic structure as purely coercive, or we adopt a broader interpretation so that justice as fairness also influences the relevant choices that people make within it; on the latter interpretation, distributive justice requires not only coercive rules but also an ethos that informs people’s choices within those rules. The basic structure objection is, of course, dependent on embracing the purely coercive interpretation. But, and this is

¹⁵ Additionally, see Rawls, 1993

Cohen's fundamental reply, Rawlsians cannot embrace the purely coercive interpretation of the basic structure without undermining the reason Rawls gives for it being the primary subject of justice. Rawls derives its primacy from its power to create 'especially deep inequalities,' with the qualifier referring to their pervasiveness, their morally arbitrary source, and their effect on people's initial chances in life. And yet, certain choices that people make within the coercive structure can also create similarly deep inequalities.

To illustrate, Cohen discusses inequalities that can occur within the family and as a consequence of unequalising incentive payments (Cohen, 2008, pp. 137-138). For brevity and continuity I refer only to the latter. If we adopt the purely coercive interpretation of the basic structure then the lax difference principle applies. As such, no injustice is thought to obtain when, as a result of the talented choosing to vary their productivity relative to their reward, policy is to pay the talented unequalising incentives payments. And yet, the resulting inequality is in part morally arbitrary. To be relevantly talented will always be in part and perhaps in combination a consequence of natural endowment, or of better fostering of natural endowment in virtue of social and/or economic privilege, or of one's abilities fortunately being valued by the market. Importantly, the unequal distribution created by unequalising incentive payments is not only, in part, morally arbitrary, it may also be pervasive and large. When that is the case, many people's initial chances in life will greatly differ, and not because of coercive structure but because of choices made within it. The reason for taking the coercive structure as the primary subject of justice thus applies to certain choices made within it. Cohen therefore insists that Rawls 'must either

admit application of the principles of justice to... patterns of personal choice that are not legally prescribed..., or, if he restricts his concern to the coercive structure only, then he saddles himself with a purely arbitrary delineation of his subject matter' (Cohen, 2008, p. 137).¹⁶

2.5. For clarity of exposition, it is worth ending this section with a summary of the relevant claims.

Claim 1: Equality of opportunity and Pareto-efficiency are co-obtainable (minus those inequalities and/or Pareto-inefficiencies consistent with the personal prerogative) if and when the talented produce at their upmost capacity for equal reward.

Claim 2: The talented make unequalising incentive payments necessary to improve the situation of the worst-off by choosing to vary their productivity relative to their reward.

Claim 3: Distributive justice requires not only coercive rules but also an ethos of distributive justice that informs people's choices within coercive rules.

¹⁶ For Andrew Williams's *revised basic structure objection*, which debatably escapes Cohen's fundamental reply, see Introduction, section 3.3.

Claim 4: Morality allows for a personal prerogative: every person has a right to pursue self-interest to some reasonable extent (even when that makes things worse than they need be for badly off people).

Claim 1 is relevant because the above mentioned freedom objection can be pressed in response. Claim 2 is relevant because if unequalising incentive payments are strictly necessary to realize Pareto-efficiency, equality of opportunity and Pareto-efficiency would not be co-obtainable in practice. Claim 3 is relevant because the ethical solution to the equality-Pareto-freedom trilemma relies on people's occupational choices being informed by an ethos of distributive justice. And, Claim 4 is relevant because the probability that many will exercise their prerogative with respect to freedom of occupational choice has the consequence that the ethical solutions fails in practice, so that the type of society we ought to seek does require either the denial of freedom of occupational choice, which virtually nobody would endorse, or one of equality of opportunity or Pareto-efficiency to be sacrificed or compromised

3. The trilemma and the ethical solution

3.1. In response to the claim that equality of opportunity and Pareto-efficiency are co-obtainable (minus those inequalities and/or Pareto-inefficiencies consistent with the personal prerogative) if and when the talented produce at their utmost capacity for equal reward (Claim 1), the freedom objection can be pressed.

The Freedom objection: Even if Claim 1 is true (and it might be false if the psychological assumption on which it rests were disproven¹⁷), Cohen must nevertheless solve the equality-Pareto-freedom trilemma.

To illustrate the trilemma, Cohen refers to *the doctor-gardener case* (Cohen, 2008, pp. 184-185). In doctor-gardener, as would be true in reality, the realization of Pareto-efficiency is dependent not only on the talented producing at their upmost capacity but also on certain occupations being filled. For simplicity of illustration, in doctor-gardener the realization of Pareto-efficiency is dependent on just one individual's occupational choice as regards these two occupations, with Pareto-efficiency being dependent on her choosing doctoring. This individual, A, possesses the skills required of either occupation, has a liking for both, but prefers gardening to doctoring for equal reward; for example, A prefers to be a gardener for £20k p.a. than to be a doctor for £20k p.a. But A's preferences differ in light of unequalising incentive payments. When the salary offered for doctoring hits £50k p.a., with the salary offered for gardening remaining at £20k p.a., the extra £30k p.a. is sufficient material incentive for A to prefer doctoring to gardening.

Before proceeding, some clarifications are necessary. In doctor-gardener, I assume that equality of income is used for illustrative purposes only, and that we should understand it as consistent with equality of opportunity; otherwise Cohen has strayed from his critique of the Pareto argument and the target of the freedom objection. Thus, for equality of opportunity and Pareto-efficiency to co-

¹⁷ See section 2.2

obtain in doctor-gardener *A* must doctor at £20k p.a. If *A* were to garden at £20k p.a. it would be consistent with equality of opportunity but Pareto-inefficient, whereas if *A* were to doctor at £50k p.a. it would be Pareto-efficient but result in inequality of opportunity. The trilemma in doctor-gardener is thus: (i) deny *A* freedom of occupational choice by forcing her to doctor at £20k p.a.; (ii) compromise Pareto-efficiency by granting *A* freedom of occupational choice but no unequalising incentive payments with the consequence that *A* chooses to garden at £20k p.a.; (iii) compromise equality of opportunity by granting *A* freedom of occupational choice and unequalising incentive payments with the consequence that *A* chooses to doctor at £50k p.a. In (i) equality of opportunity and Pareto-efficiency co-obtain; in (ii) equality of opportunity and freedom of occupational choice co-obtain; and in (iii) Pareto-efficiency and freedom of occupational choice co-obtain. But in none of (i), (ii) and (iii) do all three desiderata co-obtain.

3.2. In seeking a solution to the trilemma, Cohen takes inspiration from a policy of blood donation favored by Richard Titmuss and the work of Joseph Carens.¹⁸ Titmuss favored neither paid nor forced blood donation, but voluntary non-paid blood donation. That policy, of course, risks health care services being left with an insufficient supply of blood if insufficient numbers volunteer to donate. An objector might therefore have put it to Titmuss that instead of risking an insufficient supply of blood, society should adopt a policy that either offers people incentives to donate or forces them to donate. To this, Cohen says

¹⁸ See Cohen, 2008, pp. 188-190; Carens, 1981.

Titmuss should respond with an ethical solution, ‘by expressing confidence that a sufficient number of people might be moved to give [blood], through some combination of principled commitment and fellow feeling’ (Cohen, 2008, p. 189). Cohen proposes the very same solution to the trilemma, arguing that, ‘equality, freedom, and Pareto [are co-obtainable] if [A] chooses the stethoscope against [her] preference for the hoe as a result of some combination, as in the Titmuss solution, of principled commitment and fellow feeling’ (Cohen, 2008, p. 189).

The principled commitment Cohen has in mind is a commitment to equality of opportunity. His solution requires that ‘the talented, in particular, disbelieve that anything [presumably except differences of taste and/or choice], including their fortunate productive endowments, entitles them to better rewards or better conditions of life’ (Cohen, 2008, p. 190). However, just as acting consistently with a belief in the difference principle does not require the talented to produce at their upmost capacity for equal reward, acting consistently with a belief in equality of opportunity does not require the talented to produce Pareto-efficiently, whether that be in terms of productive capacity and/or occupational choice. As Jonathan Quong says of the ethical solution, equality of opportunity ‘does not require talented people to choose any particular occupation – it merely forbids talented people (subject to a limited agent-centered prerogative) from accepting unequalizing incentives for taking on socially optimal jobs. The world where [A] chooses to [doctor at £20k p.a.] is *not* a more egalitarian world than the one where [A] chooses gardening at the same wage, it is rather a *Pareto superior world*’ (Quong, 2010, p. 327).

Indeed, it seems that the only case in which acting consistently with a belief in equality of opportunity requires a certain occupational choice, is when either the alleviation of, or compensation for, inequalities that do not reflect differences of taste and/or choice are dependent on it. For example, *A* would appear to act inconsistently with a belief in equality of opportunity if, as a consequence of her choice to become a gardener, another individual was left to suffer through no fault of her own some type of relative disadvantage that, had *A* chosen to become a doctor, could have been alleviated. But, when conditions in doctor-gardener are such that no matter *A*'s occupational choice it remains possible to alleviate and/or compensate for those inequalities that conflict with equality of opportunity, her choice to become a gardener, despite being Pareto-inefficient, is consistent with a belief in equality of opportunity.

This is why Cohen's ethical solution to the trilemma requires not only that the choices of the talented be informed by a belief in equality of opportunity, but that their choices be informed by a belief in equality of opportunity *in combination with* 'fellow feeling.' This phrase is incredibly vague, but in the paragraphs that follow Cohen speaks of 'an obligation to serve others,' of 'a desire to contribute to society,' and of a 'sense of commitment to other people' (Cohen, 2008, p. 190). In effect, 'fellow feeling' is a belief in a duty to produce Pareto-efficiently in terms of both productive capacity and occupational choice. To illustrate, let us consider how Cohen thinks the ethical solution works in doctor-gardener:

[In doctor-gardener] the ethical solution [requires that] people believe in equality [of opportunity], so the talented, in particular, disbelieve that anything [except differences of taste and/or choice], including their fortunate productive endowments, entitles them to better rewards or better conditions of life. A, being one of them, consequently takes a doctoring job at... £20,000: thereby a key presumption in the trilemma argument... is falsified – it is not necessarily true that, under the conditions that structure the doctor-gardener example, the doctor will (simply) choose [gardening for] £20,000, and eschew doctoring unless she receives £50,000. [It is true only] if we set aside her desire to satisfy egalitarian principle and/or her sense of commitment to other people...

(Cohen, 2008, p. 190)

The first thing to notice is that Cohen initially implies that a belief in equality of opportunity is sufficient reason for A to choose to doctor at £20k p.a. But, as noted previously, if the realization of equality of opportunity is not dependent on it, to act consistently with a belief in equality of opportunity does not require A to choose to doctor at £20k p.a.; it requires only that she refuse unequalising incentive payments to doctor at £50k p.a. The second thing to notice is Cohen's claim that the trilemma holds true only if we set aside A's 'desire to satisfy egalitarian principle and/or her sense of *commitment to other people*.' It is this commitment to the well-being of others, what is effectively A's

belief in a duty to produce Pareto-efficiently so as to provide the greatest possible contribution to society, that requires *A* to doctor. And, when *A*'s belief in that duty is combined with her belief in equality of opportunity, *A* must choose to doctor at £20k p.a. if she is to act consistently with both beliefs.

Thus, as Quong argues, 'Cohen's proposed ethical solution to the trilemma does not, properly construed, rely on an egalitarian ethos prevailing amongst talented persons. Rather, it relies both on an egalitarian ethos (which precludes unequalizing incentives) and... a *Paretian ethos* (which directs talented people to choose jobs where they will contribute the most to the overall social product)' (Quong, 2010, p. 328). The Paretian ethos on which the ethical solution relies cannot therefore be a requirement of Cohenite distributive justice, because, as implied by his critique of the Pareto argument¹⁹ and in light of his parameters for fundamental principles of distributive justice²⁰, considerations pertaining to Pareto-efficiency are distinct from those pertaining to distributive justice. Of course, the Paretian ethos could be constitutive of some other conception of distributive justice. But consistent with a Cohenite conception of distributive justice, even if Cohen is right that distributive justice requires not only coercive rules but an ethos that informs people's choices within those rules, the Paretian ethos on which the ethical solution relies necessitates that *A* go beyond what Cohenite distributive justice requires of her.²¹ It may even be true, as Quong argues, 'that Cohen's Paretian ethos is in fact a *supererogatory* ethos, that is, it requires talented people to go beyond not only what justice requires, but

¹⁹ See section 2

²⁰ See Introduction, section 2.2

²¹ For an alternative view on this point, where the duty to produce Pareto-efficiently is instead interpreted as a Cohenite duty of distributive justice, see Fabre, 2010. pp. 398-399.

what morality more generally could reasonably require (by morality I mean to refer to any moral duties we might owe to others, even if they are not duties of justice)' (Quong, 2010, pp. 328-329).

4. The trilemma unsolved

4.1. After outlining the trilemma, but prior to offering the ethical solution, Cohen says:

What is the egalitarian to do? He cannot sacrifice equality without giving up his egalitarianism. So his choice appears to be between rejecting freedom or declaring against Pareto.

Old style Stalinistically inclined egalitarians might have responded by setting their faces against freedom of choice of occupation. They might have bitten the bullet (they bit, after all, many comparable bullets) and declared that, if people have to be coerced into equality, then so be it. But my own inclinations are more liberal, so that way out is not for me...

There may be some egalitarians who would be willing to reject Pareto, but, again, not me... I am an egalitarian who would worry about institutionalizing equality (even though I would still consider it a requirement of justice) if it made us all losers (other than in respect of gaining the equality value). But, since I am also unwilling to reject freedom of occupational choice, it seems that I am driven to abandon equality, *at the policy level*. But I shall not

abandon equality. I shall instead try to show that the trilemma is misconstrued, because of a lack of clarity in the description of its freedom element.

(Cohen, 2008, pp. 186-188, emphasis added)

This passage suggests that Cohen desires a solution to the trilemma not merely at the level of fundamental principles where we abstract from social facts, but in the context of what type of society we ought to seek *in practice*, since ‘policy’ is merely *state* rules of regulation by another name.²² The misinterpretation of the trilemma to which Cohen refers in the final sentence is that freedom of occupational choice is maintained, consistent with the co-obtaining of equality of opportunity and Pareto-efficiency, when occupational choice is informed by a commitment to equality of opportunity in combination with a commitment to produce Pareto-efficiently. Thus, rather than ‘abandon’ equality of opportunity at the level of *state* rules of regulation, Cohen seeks a solution by appeal to *non-state* rules of regulation; namely, an egalitarian-Paretian ethos that informs people’s choices within state rules of regulation. Yet when developing rules of regulation, whether they be state or non-state rules of regulation, considerations pertaining to social facts come into play; otherwise rules of regulation would cease to reflect ‘practical constraints that restrict the extent to which justice can be applied’ (Cohen, 2008, p. 3). And a particularly relevant social fact with respect to the ethical solution is people’s predictable use of the personal prerogative.

²² For clarification re state rules of regulation, see Introduction, section 2.2.

The personal prerogative prevents the ethical solution from working when relevant social facts are taken into consideration, because unless A's refusal to doctor at £20k p.a. constitutes an unreasonable pursuit of self-interest, she can justify a choice to garden at £20k p.a. or doctor at £50k p.a. (if unequalising incentive payments are offered) by appeal to it; that is, by appeal to her right to pursue self-interest to some reasonable extent (even when that makes things worse than they need be for badly off people).²³ Initially, one might be tempted to respond to that claim by arguing that because A has a liking for both occupations a refusal to doctor at £20k p.a. would be unreasonably self-interested. But, even if that were true, we can imagine a variant of doctor-gardener in which A finds doctoring suitably unpleasant such that her refusal to doctor at £20k p.a. must fall within her personal prerogative; this variant of doctor-gardener models real world conditions where Pareto-efficiency is likely dependent on occupations being filled for which insufficient numbers of people would have a liking when reward is equal.

The ethical solution therefore works only if either (i) we deny the personal prerogative or (ii) people do not exercise it with respect to occupational choice. Cohen is against (i) and so, on his view, the ethical solution works only if (ii). But, at the level of rules of regulation where social facts come into play, the probability that (ii) will not occur, that many of the talented (upon whose occupational choices about how hard to work and what occupation to fill the co-

²³ Additionally, David Estlund argues that if Cohen allows for the personal prerogative then he must also allow for a fraternal prerogative; a right to pursue the interests of one's family and/or friends to some reasonable extent (even when that makes things worse than they need be for badly off people). This would likely result in much economic inequality inconsistent with equality of opportunity, because it would appear to justify unequalising incentive payments when the talented use the extra reward to reasonably benefit their family and/or friends (Estlund, 1998, pp. 106-107).

obtaining of equality of opportunity and Pareto-efficiency depend) will exercise their personal prerogative as regards occupational choice, will in turn produce *inequality* of opportunity and/or Pareto-*inefficiency*. Admittedly, Cohen does not claim that the ethical solution results in absolute equality of opportunity and Pareto-efficiency co-obtaining alongside freedom of occupational choice. Rather, he allows for some level of *inequality* of opportunity and/or Pareto-*inefficiency* in light of the personal prerogative.²⁴ But when many exercise their personal prerogative, as no doubt many will, *a great deal* of *inequality* of opportunity and/or Pareto-*inefficiency* will obtain. It therefore makes little sense to claim that the ethical solution works when the relevant social facts are taken into consideration. On the contrary, equality of opportunity or Pareto-efficiency or freedom of occupational choice must be compromised to a significant degree.

4.2. The above passage, however, could well be misleading. It could be that Cohen's aim is not to solve the equality-Pareto-freedom trilemma in the context of what type of society we ought to seek *in practice*. After all, Cohen's contribution to normative political philosophy is largely devoted to tackling the question "What is justice?", as opposed to what he considers the other two important questions for political philosophers: "What should the state do?" and "Which social state of affairs ought to be brought about?"²⁵ Furthermore, a few pages after the above passage, Cohen acknowledges that the co-obtaining of equality of opportunity and Pareto-efficiency may be unfeasible, but that his concern is with whether the ethical solution works *if* their co-obtaining is feasible

²⁴ See *Claim 1* (2.5); Cohen, 2008, p. 181.

²⁵ See Introduction, section 2.2

(Cohen, 2008, pp. 191-192). That clarification strongly suggests that Cohen is concerned with solving the trilemma only at the level of fundamental principles where we abstract from social facts. His concern is with the compatibility of the three desiderata whilst abstracting from considerations pertaining to the relevant social facts, such as the talented's predictable use of the personal prerogative.

Despite my concerns being largely practical, it is nevertheless worth noting that even at the level of fundamental principle, the success of the ethical solution depends on whether the ethos is a requirement of justice and on how we conceptualize freedom. For as Paula Casal argues, 'different conceptions of freedom will yield different conclusions regarding Cohen's claim to have solved the trilemma' (Casal, 2013, p. 8). To illustrate, she draws on the following case provided by Joseph Raz.

Imagine a person who can pursue an occupation of his choice but at the price of committing murder for each option he rejects. First he has to choose whether to become an electrician. He can refuse provided he kills one person. Then he is offered a career in dentistry, which again he is free to refuse if he kills another person, and so on. Like the person facing the proverbial gunman demanding 'your money or your life', who is acting freely if he defies the threat and risks his life, the person in our dilemma is acting freely if he agrees to murder in order to become a dentist, rather than an electrician. If he does so then his choice does not tend to show that his life is not autonomous. But if he chooses the

right way and agrees to be an electrician in order to avoid becoming a murderer then his choice is forced.

(Raz, 1986, p. 379)

According to the conception of freedom employed here by Raz, occupational choice is autonomy restricting when the chooser lacks an adequate range of acceptable options. And, in doctor-gardener *A* might be thought to lack a range of adequate options. For if *A*'s occupational choice is not informed by the egalitarian-Paretian ethos, her preferences are such that she would choose to garden at £20k p.a. unless she is offered unequalizing incentive payments to the point of £50k p.a. to become a doctor.²⁶ On the Razian conception, as Casal argues, *A* is therefore acting freely 'if she ignores the ethos and pursues other careers, but not if she obeys the ethos and delivers what Cohen claims [distributive] justice demands. Thus..., either equality [of opportunity and Pareto-efficiency] is preserved (through ethical obedience) but freedom [of occupational choice] is not, or freedom [of occupational choice] is preserved (through ethical disobedience) and equality [of opportunity and/or Pareto-efficiency] is not. Either way we once again face the trilemma' (Casal, 2013, p. 9).

The ethical solution thus works at the level of fundamental principles when freedom of occupational choice merely requires absence of coercion, for *A* is then relevantly free when, being informed by the egalitarian-Paretian ethos, she chooses to doctor at £20k p.a. Indeed, this appears to be how Cohen

²⁶ See section 3.1

conceptualizes freedom of occupational choice, for he says that '[t]he value of freedom lies in the absence of coercion itself, not in the absence of legitimate moral demands' (Cohen, 2008, p. 195). But, so Raz would think, A's autonomy is restricted because authorship over her life requires not only that she enjoy (i) absence from coercion, but that she also enjoy (ii) a certain level of mental capacity and (iii) an adequate range of acceptable options when making choices that affect the course of her life (Raz, 1986, pp. 369-378).²⁷

Since (ii) and (iii) are commonly associated with positive freedom, A must enjoy both negative and positive freedom to be an autonomous agent on a Razian conception. Yet, as Casal argues, both Raz's protagonist and Cohen's doctor-gardener are denied (iii) an adequate range of acceptable options when making choices that affect the course of their lives (Casal, 2013, p. 10). Raz's protagonist faces a choice merely between murder and not-murder, whilst A, on a Cohenite conception of distributive justice, where the egalitarian-Paretian ethos is (contradictorily²⁸) a requirement of distributive justice, faces a choice merely between acting justly and unjustly. Thus, if Raz's protagonist and A act ethically (not-murder/act justly) neither is acting autonomously, because autonomy 'cannot be obtained by a person who is constantly fighting for moral survival. If he is to be moral then he has no choice, just as the person struggling for physical survival has no choice if he is to stay alive' (Raz, 1986, pp. 379-380).

²⁷ In an attempt to fully explain our aversion to restricting freedom of occupational choice, Michael Otsuka likewise appeals to autonomy; to the idea 'that our lives would not be ours to lead if our vocation or occupation were determined solely by the greater needs of others' (Otsuka, 2008, p. 451).

²⁸ Because its Paretian component falls foul of Cohen's parameters for fundamental principles of justice.

Accordingly, the ethical solution works at the level of fundamental principles when freedom of occupational choice merely requires absence of coercion. But on a more positive conception of freedom of occupational choice, where it requires an adequate range of acceptable options, the ethical solution fails because the egalitarian-Paretian ethos denies *A* an adequate range of acceptable options; freedom of occupational choice does not co-obtain alongside equality of opportunity and Pareto-efficiency. As to how we ought to conceptualize freedom of occupational choice, I have not here explored rival conceptions of freedom to a sufficient degree to draw a conclusion. My intention in this sub-section is merely to point out that the success of the ethical solution even when abstracting from the relevant social facts, depends on how we conceptualize freedom and on whether the egalitarian-Paretian ethos is a requirement of distributive justice.

5. Conclusion

The focus of this chapter has been how Cohen understands the relationship between equality of opportunity, Pareto-efficiency and freedom of occupational choice in principle. We have seen that his ethical solution to the equality-Pareto-freedom trilemma – which holds that any two of the desiderata may co-obtain but all three cannot, as to fill occupations Pareto-efficiently whilst realizing equality of opportunity would require forcing people who prefer different occupations for reward consistent with equality of opportunity to fill those occupations on which the realization of Pareto-efficiency depends – is to argue that all three desiderata are co-obtainable when the occupational choices of the talented are informed by

an egalitarian-Paretian ethos. This is the second view I identify with Cohen's positive contribution to the question of what type of society we ought to seek. The view is that, in principle, equality of opportunity, Pareto-efficiency and freedom of occupational choice are co-obtainable when people's occupational choices are informed by a commitment to equality of opportunity in combination with a commitment to produce Pareto-efficiently both in terms of productive capacity and occupational choice.

Although Cohen's aim is to demonstrate the compatibility of the three desiderata in principle, my concern is with what type of society we ought to seek, and so I am more concerned with what we ought to do in practice than with what is possible in principle. I therefore evaluated whether the ethical solution succeeds not only when we abstract from social facts, but also when we recognize those social facts that are particularly relevant; namely, each person's predictable use of their right, for which Cohen allows, to pursue self-interest to a reasonable extent (even when that makes things worse than they need be for badly off people). For if *A* chooses to fill a Pareto-*inefficient* occupation for reward consistent with equality of opportunity, or to fill a Pareto-efficient occupation for reward consistent with equality of opportunity but to not work at her utmost capacity, or to fill a Pareto-efficient occupation for reward *inconsistent* with equality of opportunity by accepting unequalizing incentives, she can justify either of these choices by appeal to that prerogative if it does not constitute an unreasonable pursuit of self-interest. In cases where *A* has a liking for the occupation that requires filing for Pareto-efficiency to obtain, a refusal to fill it or a refusal to work at her utmost capacity absent unequalizing incentives

might constitute an unreasonable pursuit of self-interest, so that she cannot make those refusals by appeal to her prerogative. But the realization of Pareto-efficiency in practice likely requires occupations to be filled for which insufficient numbers of people will have a preference when reward is consistent with equality of opportunity. As such, there will be numerous cases where it falls within *A*'s prerogative either (i) to depart from the Paretian component of the egalitarian-Paretian ethos by filling a Pareto-*inefficient* occupation or by not working at her upmost capacity in a Pareto-efficient occupation, or (ii) to depart from the egalitarian component of the egalitarian-Paretian ethos by accepting unequalizing incentives to fill a Pareto-efficient occupation, rather than (iii) act in accordance with both components of the egalitarian-Paretian ethos by voluntarily choosing to fill a Pareto-efficient occupation, and to work at her upmost capacity in that occupation, for reward consistent with equality of opportunity.

Equality of opportunity, Pareto-efficiency and freedom of occupational choice are therefore co-obtainable only if either (i) we deny the personal prerogative or (ii) people do not exercise it with respect to their occupational choices. If morality allows for such a prerogative, as Cohen and Scheffler believe, we ought not to deny people recourse to it, and so the desiderata co-obtain only if people choose not exercise it when making occupational choices about how hard to work and what occupation to fill. Yet people will inevitably exercise their right to pursue self-interest to a reasonable extent when making such occupational choices. The consequence is *inequality* of opportunity and/or Pareto-*inefficiency* to such a significant degree that it makes little sense to claim

that equality of opportunity, Pareto-efficiency and freedom of occupational choice co-obtain minus those inequalities and/or Pareto-inefficiencies consistent with the personal prerogative. Rather, they simply do not co-obtain.

Although the failure of the ethical solution in practice is no critique of Cohen, because he intends it to operate at the level of fundamental principles where we abstract from social facts, it is important to clarify that, in practice, the type of society we ought to seek when taking into account considerations pertaining to equality of opportunity, Pareto-efficiency and freedom of occupational choice does require either the denial of freedom of occupational choice, which virtually nobody would endorse, or one of equality of opportunity or Pareto-efficiency to be sacrificed or compromised. Particularly relevant in this respect is the third view I identify with Cohen's positive contribution to the question of what type of society we ought to seek. This view is that, in practice, the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency. Should we embrace that trade-off, or should we instead seek to realize a society that reflects the sacrifice or compromise of Pareto-efficiency in favour of realizing equality of opportunity?

Chapter 3

Pareto-efficiency Often Trumps Equality of Opportunity

1. Introduction

This chapter focuses on how Cohen understands the relationship between equality of opportunity and Pareto-efficiency in practice. In the previous chapter we saw, at least when adopting a value pluralist methodology of the sort embraced by Cohen¹, that the type of society we ought to seek when taking into account considerations pertaining to equality of opportunity and Pareto-efficiency does, in practice, require either the denial of freedom of occupational choice, which virtually nobody would endorse, or one of equality of opportunity or Pareto-efficiency to be sacrificed or compromised. Particularly relevant in this respect is Cohen's view, which is the third view I indentify with his positive contribution to the question of what type of society we ought to seek, that, in practice, the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency.

This view comes in the form of a concession in *Rescuing* Part I, on which Cohen expands in a section on justice and Pareto-efficiency in *Rescuing* Part II, that Pareto-efficiency often trumps egalitarian justice when it comes to developing *state* rules of regulation. Being a concession rather than a fully developed view, it is somewhat open to interpretation. I argue that Cohen is best interpreted here as embracing a pluralist distributive ethic that combines telic egalitarian and telic prioritarian beliefs. It says that a luck egalitarian social state

¹ See Introduction, section 2

of affairs – because fair – has non-instrumental value, but that the state should often pursue Pareto-efficiency over a luck egalitarian principle of equality of opportunity because a social state of affairs in which people, and particularly the worst-off, enjoy greater benefits is non-instrumentally more valuable than egalitarian justice.

Having clarified the view I proceed to evaluate it in the context of the “equality, priority or what?” debate. The subject of this debate is whether we ought to embrace egalitarianism, prioritarianism or some alternative ethic of distribution. As Cohen’s view that the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency takes the form of a pluralist ethic that combines telic egalitarian and telic prioritarian beliefs, it faces objections from either side of this debate. The most prominent of these objections are *the levelling down objection* to telic egalitarianism and *the Otsuka-Voorhoeve objection* to prioritarianism. For reasons to be explained, if the former objection succeeds the telic egalitarian component of Cohen’s pluralist ethic is implausible, and if the latter objection succeeds its telic prioritarian component is implausible. Drawing on the work of Larry Temkin and Martin O’Neill I argue that neither the levelling down objection nor the Otsuka-Voorhoeve objection show Cohen’s egalitarian-prioritarian ethic to be implausible.

2. Pareto-efficiency vs. distributive justice

2.1. Cohen’s claim that Pareto-efficiency often trumps equality of opportunity at the level of rules of regulation, that is, at the level where rules for the governing

of society ‘reflect both values other than justice and practical constraints² that restrict the extent to which justice can be applied’ (Cohen, 2008, p. 3), comes in the form of a revision to the reprinting of his Tanner Lecture in *Rescuing*.³ In both the original lecture and its reprinting Cohen says: ‘socialist egalitarians... have no strong opinion about inequality at millionaire/billionaire levels. What they find wrong is that there is, so they think, unnecessary hardship at the lower end of the scale’ (Cohen, 2008, p. 31). Without further clarification socialist egalitarians are not strictly speaking egalitarians, because their objection is to the unnecessary hardship of the worst-off, which, can be alleviated consistent with inequality. And yet despite considering himself a socialist egalitarian Cohen is not one so characterized, because, regardless of how well off one happens to be in absolute terms, he believes it unjust if one suffers inequality for which she cannot reasonably be held personally responsible. Commenting on this mischaracterization of himself in a new footnote, he says:

I [was] insufficiently exercised [at the time of writing] by the distinction between justice and optimal policy. Under the influence of that distinction, I would now say that distributive justice *is* (some kind of) equality, but that the Pareto principle, and also that constrained Pareto principle that is the difference principle, often trump justice.

(Cohen, 2008, p. 30, n. 7)

² Cohen more often refers to such constraints as ‘social facts.’

³ *Rescuing* Chapter 1 was previously published as: Cohen, G. A. (1992), “Incentives, Inequality and Community,” in *The Tanner Lectures on Human Values*, ed. G. Peterson, Salt Lake City: University of Utah Press.

What Cohen refers to here as ‘the distinction between justice and optimal policy’ is, of course, his distinction between fundamental principles of justice and rules of regulation by another name. More specifically, I read him as distinguishing between fundamental principles of justice and *state* rules of regulation. As set out in the Introduction⁴, Cohen distinguishes between rules of regulation ‘that obtain by order of the state [and] those that emerge within the milder order of social norm formation’ (Cohen, 2008, p. 281), and use of the term ‘policy’ suggests he has the former in mind, because one would not commonly refer to social norms as ‘policy.’ At the level of state rules of regulation, then, where rules for the governing of society by the state reflect both values other than justice and social facts that restrict the extent to which justice can be applied, Cohen believes Pareto-efficiency often trumps distributive justice which is some kind of equality.

This is consistent with Cohen’s remarks about not wanting to reject Pareto-efficiency in response to the equality-Pareto-freedom trilemma. For we saw in Chapter 2 that he characterizes himself as: ‘an egalitarian who would worry about institutionalizing equality (even though I would still consider it a requirement of justice) if it made us all losers (other than in respect of gaining the equality value)’ (Cohen, 2008, p. 188).⁵ As regards the claim that distributive justice is *some kind* of equality, as opposed to equal access to advantage, I interpret this vagueness as reflective of Cohen’s concerns about: the difficulty of developing an index of advantage⁶; his puzzlement as to the need for a hybrid metric of egalitarian interpersonal comparison, as opposed to specifying

⁴ See Introduction, section 2.2

⁵ See Chapter 2, section 4.1

⁶ See Chapter 1, section 3.2

opportunities in terms of either welfare or resources⁷; and doubts he came to have about whether option luck ever preserves distributive justice.⁸ It is safe to assume, however, that he means some kind of luck egalitarian principle of equality of opportunity, as opposed to a principle of equality of outcome.⁹

The claim that Pareto-efficiency often trumps distributive justice, which is some kind of luck egalitarian principle of equality of opportunity, is further clarified in a section on justice and Pareto-efficiency in *Rescuing* Part II. Therein, Cohen asks us to imagine a world populated by two individuals, *A* and *B*, whom each begin with five units of manna (D1: *A* 5, *B* 5). Three extra units of manna then fall from heaven: two fall to *A* and one falls to *B* (D2: *A* 7, *B* 6). In addition, we imagine that there is no way of equalizing D2; the extra manna cannot be divided so that *A* and *B* each gain one and a half units, nor can half a unit of *A*'s original manna be transferred to *B*, and nor can one unit of *A*'s manna be destroyed. Rather, we face a choice between only two feasible distributions: D1 or the strongly (because everyone is better off) Pareto-efficient D2; D1 requires the destruction of the extra manna in its entirety, whereas D2 requires acceptance of the extra manna as the distribution fell from heaven (Cohen, 2008, pp. 316-317). In response, Cohen says that whereas a 'justice fetishist' would choose D1, he would choose D2, because although '[j]ustice doesn't follow Pareto optimality, and [D2] is not just, ...it's preferable on grounds of human flourishing and might therefore reasonably be chosen' (Cohen, 2008, p. 319).

Much the same point is made when illustrating his threefold distinction between the political philosophical questions: (i) What is justice?; (ii) What

⁷ See Chapter 1, section 3.2

⁸ See Cohen, 2011e

⁹ See Chapter 1, sections 2.1 and 3.2

should the state do?; and (iii) Which social states of affairs ought to be brought about? As was set out in the Introduction, Cohen's distinction between fundamental principles of justice and rules of regulation corresponds with these questions.¹⁰ Whatever the correct principles of justice are, they are the answer to question (i); whatever the correct *state* rules of regulation are, they are the answer to question (ii); and, because social states of affairs can be brought about not only by state agency but also by or in combination with non-state agency, whatever the correct *state and non-state* rules of regulation are, they are the answer to question (iii). Imagining that we face a choice between two feasible distributions (5/5 and 8/6), Cohen says: 'it may be grotesque [in question (ii)-territory] for the *state* to make everybody worse off, [but] it does not follow that [in question (i)-territory] there is no *injustice* in the 8/6 inequality, and, partly for that reason, it does not follow that [in question (iii)-territory] no one should seek to bring the 5/5 world about' (Cohen, 2011h, p. 229).

Clearly, when a Pareto-efficient alternative to distributive justice is feasible, Cohen believes the state should often pursue it over equality of opportunity because human flourishing is more important than distributive justice. But his position is still somewhat unclear, for why does he claim that Pareto-efficiency *often* trumps equality of opportunity? The italicized caveat implies that sometimes it does not, as does the caveat that Pareto-efficiency 'might reasonably be chosen' over equality of opportunity in the manna example. Why does Cohen not commit himself to the claim that Pareto-efficiency *always* trumps distributive justice when developing state rules of regulation? In a

¹⁰ See Introduction, section 2.2

footnote Cohen provides two brief answers: ‘[(i)] because (see sections 10 and 17 of [*Rescuing*] Chapter 1) we might defy Pareto where it *rewards* injustice (it does not do so in our manna example), [and (ii)] because we might sacrifice Pareto to equality up to a certain limit’ (Cohen, 2008, p. 319, n. 66).

As regards (i), Cohen is referring to those cases, discussed in Chapter 2, where the productively talented make unequalising incentive payments necessary to realize Pareto-efficiency by choosing to vary their productivity relative to their reward.¹¹ As Cohen maintains that, as a matter of distributive justice, people’s choices within coercive rules ought to be informed by a commitment to equality of opportunity in combination with a commitment to produce Pareto-efficiently whether in terms of productive capacity or occupational choice (the egalitarian-Paretian ethos), the productively talented here act unjustly.¹² Thus, on a Cohenite conception of distributive justice, to pay the productively talented unequalising incentives as a means to realizing Pareto-efficiency would be to reward injustice. But, so Cohen argues (in the second of those sections to which he directs us), ‘[although] paying, which makes all... better off than refusing to pay, is almost certainly preferable, ...in some cases, with less at stake, we might prefer to forgo the Pareto improvement, in order not to accede to an unjust demand’ (Cohen, 2008, p. 84). For example, a great deal is at stake when refusing to pay the talented unequalising incentives has the effect of denying the worst-off a sufficient standard of living. In cases of this type, it is preferable to pay the productively talented unequalizing incentives even though, on a Cohenite conception of distributive justice, it would be to reward injustice. But in cases

¹¹ See Chapter 2, section 2.2

¹² See Chapter 2 sections 2.4 and 3.2

where only a small Pareto-improvement hinges on whether we pay the talented unequalising incentives, and everyone, including the worst-off, already enjoys a sufficient standard of living, not a great deal is at stake. Under conditions such as these, so Cohen thinks, ‘we might defy Pareto where it rewards injustice.’ That is to say, we might prefer to settle for what we already have rather than reward the talented for acting unjustly.

As regards (ii), Cohen does not refer us to any clarificatory text, and so his reason for thinking ‘we might sacrifice Pareto-efficiency to equality up to a certain limit,’ even if its realization does not reward injustice, is unclear. One possibility is that although he thinks Pareto-efficiency often trumps equality of opportunity, there are cases where the pursuit of Pareto-efficiency compromises equality of opportunity to an extent that is unacceptable so that the state ought not to pursue it. For example, D2: $A\ 7, B\ 6$; D3: $A\ 20, B\ 10$; and D4: $A\ 50, B\ 6$; all represent Pareto-efficient alternative distributions to D1: $A\ 5, B\ 5$. Moreover, they all represent a *strong* Pareto-improvement on D1.¹³ But if D1 represents equality of opportunity, then the extent to which equality of opportunity is compromised is different in each of D2, D3 and D4, with it being compromised least by a move from D1 to D2, and most by a move from D1 to D4. It could be, then, that what Cohen means by sacrificing Pareto-efficiency to equality of opportunity up to a certain limit, is that when the only feasible Pareto-efficient alternative distribution or distributions to equality of opportunity involve its being compromised to an unacceptable degree (e.g., D4), the state ought not to pursue Pareto-efficiency.

¹³ A *strong* Pareto-improvement occurs when a distributive move makes everyone better off. A *weak* Pareto-improvement occurs when a distributive move makes at least one individual better off but no individual worse off.

To summarize the clarifications that have so far been made, Cohen's view that the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency is as follows:

Pareto-efficiency often trumps distributive justice: When a Pareto-efficient alternative to distributive justice, which is some kind of luck egalitarian principle of equality of opportunity, is feasible, the state should often pursue Pareto-efficiency over equality of opportunity because human flourishing is of greater importance than distributive justice.

Often not always caveat: In cases where the pursuit of Pareto-efficiency means acceding to unjust demands and little rests on not acceding to them, and perhaps in cases where the pursuit of Pareto-efficiency means compromising equality of opportunity to an unacceptable degree, the state might prefer to sacrifice or compromise Pareto-efficiency instead of equality of opportunity.

2.2. To further clarify Cohen's view that the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency, and because it enables an evaluation as to whether, all else being equal, we ought to seek a type of society which reflects that trade-off or some alternative, I now consider where the view sits in relation to two distinctions drawn by Derek Parfit in his seminal essay, "Equality or Priority?"

The first of these is Parfit's distinction between teleological and deontological egalitarianism.

Teleological and deontological egalitarianism

There are two main ways in which we can believe in equality. We may believe that inequality is *bad*. On such a view, when we should aim for equality, that is because we shall thereby make the outcome better. We can then be called *Teleological* – or, for short *Telic* – Egalitarians. Our view may instead be *Deontological* or, for short, *Deontic*. We may believe we should aim for equality, not to make the outcome better, but for some other moral reason.

(Parfit, 2002, p. 84)

More accurately, a teleological ethical theory holds that the rightness of an action depends only on the value of its consequences, whereas a deontological ethical theory holds that the rightness of an action is not exclusively determined by the value of its consequences. Thus, telic egalitarians believe we should aim for some type of egalitarian state of affairs because it is valuable, whereas deontic egalitarians believe we should aim for some type of egalitarian state of affairs for reasons other than, but perhaps in addition to, its value. A state of affairs, however, could have non-instrumental value, instrumental value, or both non-instrumental and instrumental value; respectively that is, a state of affairs could have value in itself, or serve as a means to the realization of some other value or good, or have value in itself whilst also serving as a means to the

realization of some other value or good. This raises the question as to whether one must believe an egalitarian state of affairs has non-instrumental value and/or instrumental value in order to qualify as a telic egalitarian. My understanding is that a telic egalitarian must believe an egalitarian state of affairs has non-instrumental value (and perhaps also instrumental value), because if she believes it to have only instrumental value she is not so much a telic egalitarian as she is a telic *something-else-ian*, because what she aims for is not an egalitarian state of affairs per se but state of affairs x, where x depicts the value or good that equality serves as a means to realizing.¹⁴

There are many ways in which equality might be thought to have instrumental value. Thomas Scanlon, for example, argues that the moral force of equality is derived (amongst other things) from its serving as a means to the relief of unnecessary suffering; the prevention of stigmatizing differences in status; and the prevention of some having unacceptable power over others (Scanlon, 2002, pp. 42-47). Indeed, even when offering an example of how equality might be thought to have non-instrumental value, Thomas Nagel appears to provide another example of how it might be thought to have instrumental value when he claims: '[i]t is a condition of the right kind of relations among [society's] members, and of the formation in [society] of healthy fraternal relations, desires, and sympathies' (Nagel, 2002, p. 62). So understood, rather than having non-instrumental value, equality is serving as a means to the realization of fraternity.

¹⁴ For more in depth analysis of Parfit's distinction between telic and deontic egalitarianism see (for example) Norman, 1997, and O'Neill, 2008.

Larry Temkin has sought to defend the non-instrumental value of equality and thus telic egalitarianism. He argues that even though values other than equality matter, and that equality does not matter most, it is nevertheless ‘bad, or objectionable, to some extent – because unfair – for some to be worse off than others through no fault or choice of their own’ (Temkin, 2002, pp. 129-130). Thus, Temkin believes some luck egalitarian state of affairs has non-instrumental value; that a fair distribution is valuable in itself, even if we ought not to pursue it all things considered. In contrast, Ronald Dworkin is an example of a deontic egalitarian, for his position is that equal concern for citizens is a requirement of legitimate governance, and this in turn requires that government aim at equality of resources (Dworkin, 2002, pp. 1-3). According to Dworkin, then, rather than pursue equality of resources because of its value as a state of affairs, government ought to show equal concern for its citizens by pursuing equality of resources.

For the same reason as Temkin, Cohen is a telic egalitarian. He believes a luck egalitarian state of affairs has non-instrumental value as opposed to only instrumental value, because rather than believe a luck egalitarian state of affairs serves as a means to the realization of distributive justice, he thinks distributive justice *is* some kind of luck egalitarian state of affairs, and that it has value in itself because it is fair. No instrumental relationship occurs here, since for Cohen distributive justice, fairness, and equality of opportunity are one and the same value. As Patrick Tomlin recognizes, ‘Cohen uses ‘justice’, ‘equality’ and ‘fairness’ as synonyms at many points [throughout *Rescuing*], and does the same with their antonyms’ (Tomlin, 2010, p. 233, n. 22).¹⁵ This, of course, reflects

¹⁵ For criticism of Cohen’s conception of distributive justice as equality, see (for example) Arneson, 2008; Quong, 2010; and Tomlin, 2010.

Cohen's luck egalitarianism. Cohen believes it is non-instrumentally bad, because unfair, when people suffer disadvantage for which they cannot reasonably be held personally responsible. Thus, he believes it is non-instrumentally valuable, because fair, when people do not suffer disadvantage unless it is reasonable to hold them personally responsible.¹⁶

The second of Parfit's distinctions we ought to consider, with respect to clarifying and evaluating Cohen's view that the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency, is his distinction between egalitarianism and prioritarianism.

Egalitarianism and prioritarianism

[For prioritarians] benefits to the worse off matter more, but that is only because these people are at a lower *absolute* level. It is irrelevant that these people are worse off *than others*. Benefits to them would matter just as much even if there *were* no others who were better off... [Thus, whereas] [e]galitarians are concerned with *relativities*: with how each person's level compares with the level of other people..., [prioritarians] are concerned only with people's absolute levels.¹⁷

(Parfit, 2002, p. 104)

¹⁶ As to when Cohen believes it reasonable and unreasonable to hold one responsible for her disadvantage, see Chapter 1, section 3.

¹⁷ Some political philosophers associated with prioritarianism, such as Nagel (2002, pp. 74-76), believe that small improvements in the circumstances of the worst-off should not be given priority when the alternative is significantly large improvements in the circumstances of the better-off.

For reasons I touch on below, Parfit himself favors prioritarianism over egalitarianism; although he is officially agnostic in “Equality or Priority?” Another example is Richard Arneson’s responsibility-catering prioritarianism, which holds that it is non-instrumentally more valuable to prioritize benefits to those who are worse off through no fault of their own, than it is to distribute benefits to those who are worse off as a result of choices for which they can be held personally responsible (Arneson, 2000, p. 344). Additionally, just as one can be either a telic or deontic egalitarian, so too can one be either a telic or deontic prioritarian, for as Parfit says, ‘[l]ike the belief in equality, the Priority view can take either Telic or Deontic forms. It can be a view about which outcomes would be better, or a view that is only about what we ought to do’ (Parfit, 2002, p. 101).

No doubt, as his original characterization of socialist egalitarians suggests, Cohen’s concern for human flourishing is first and foremost a concern for alleviating the unnecessary hardship of the worst-off. But it is not merely a sufficientarian concern; that is to say, it is not merely a concern for securing a decent life for all. To illustrate, consider once again the manner from heaven case from *Rescuing* Part II.¹⁸ If a sufficiency threshold is satisfied in D1: A 5, B 5, Cohen would still think that D2: A 7, B 6, is ‘preferable on grounds of human flourishing and might therefore reasonably be chosen’ (Cohen, 2008, p. 319), because he is against ‘institutionalizing equality... if it made us all losers’ (Cohen, 2008, p. 188). Yet, neither is Cohen’s view, that Pareto-efficiency often trumps distributive justice, which is some kind of luck egalitarian principle of equality of opportunity, *purely* prioritarian, because it is a view about both

¹⁸ See section 2.1

relative and absolute levels. It does not therefore sit neatly on either side of Parfit's distinction between egalitarianism and prioritarianism. It says relative levels of some specification of equality of opportunity matter for reasons of distributive justice, but absolute levels of human flourishing often matter more than distributive justice. Thus, unlike strict egalitarians, or as Cohen calls them, 'justice fetishists'¹⁹ and 'fairness fanatics',²⁰ he does not believe equality of opportunity matters above all else. And yet, unlike prioritarians, he does believe some kind of luck egalitarian state of affairs has non-instrumental value.

Cohen's view that the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency is therefore best understood as a pluralist distributive ethic that combines telic egalitarian and telic prioritarian commitments. On the one hand, we have distributive justice, which is some kind of luck egalitarian principle of equality of opportunity, and which has non-instrumental value because fair. On the other hand, when a Pareto-efficient alternative distribution to distributive justice is feasible, Cohen believes the state should pursue it over a luck egalitarian principle of equality of opportunity (subject to the '*often not always*' caveat²¹) because a social state of affairs in which humanity flourishes to a greater extent is more valuable than egalitarian justice. And, in light of the above noted textual evidence which suggests Cohen's concern for human flourishing is primarily a concern for alleviating the unnecessary hardship of the worst-off, we can refine that interpretation so that Cohen believes the state should pursue Pareto-efficiency over equality of opportunity (subject to the '*often not always*' caveat) because a

¹⁹ See Cohen, 2008, p. 319

²⁰ See Cohen, 2008, p. 168.

²¹ See end of section 2.1

social state of affairs in which people, *and particularly the worst-off*, enjoy greater benefits is more valuable than egalitarian justice. As to whether we should interpret him as believing it non-instrumentally and/or instrumentally more valuable than egalitarian justice, it seems safe to assume the former because it is clearly valuable in itself when people do not have to battle unnecessary hardship, but there is insufficient textual evidence with respect to the latter.

In summary, Cohen's view that the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency is best understood as a pluralist distributive ethic that combines telic egalitarian and telic prioritarian beliefs.

Cohen's egalitarian-prioritarian ethic: some kind of luck egalitarian social state of affairs – because fair – has non-instrumental value, but the state should often pursue Pareto-efficiency over a luck egalitarian principle of equality of opportunity because a social state of affairs in which people, and particularly the worst-off, enjoy greater benefits is non-instrumentally more valuable than egalitarian justice.

2.3. Prior to defending the plausibility of Cohen's egalitarian-prioritarian ethic, it is worth ending this section by noting that in terms of outcomes it might be no more egalitarian than justice as fairness. The above quotation with which I began my interpretation is essentially an admission of this.²² But it is nevertheless

²² See section 2.1

worth emphasizing simply because Cohen is commonly thought of as being more radically egalitarian than Rawls.

To illustrate, imagine that we start from a position of equality of opportunity, D1: A 5, B 5, and that the state could, if so inclined, organize society so that it reflects any of the following distributions: D2: A 7, B 6; D3: A 20, B 10; and D4: A 50, B 6. At first glance, acting consistently with the difference principle seems to require that the state reorganize society so that we move from D1 to D3, because D3 is the distribution from the feasible set where ‘social and economic inequalities are... to the greatest benefit of the least-advantaged members of society’ (Rawls, 2001, pp. 42-43); in D3 the least advantaged have 10, rather than 5 in D1 and 6 in D2 and D4. But Rawls says that the difference principle ‘does not require continual economic growth over generations to maximize upward indefinitely the expectations of the least advantaged’ (Rawls, 2001, pp. 63-64). All else being equal, then, acting consistently with the difference principle does require that the state reorganize society so that we move from D1 to D3, but if the state has good reason not to pursue economic growth to that extent, it would also act consistently with the difference principle by reorganizing society so that we move from D1 to D2.

In contrast, the Pareto principle has the potential to mandate distributive moves that result in vastly unequal states of affairs, such as a move from D1 to D4. As Cohen understands it, the *strong* Pareto principle mandates all Pareto-improvements, that is, it mandates any distributive move that makes at least one individual better off so long as no individual is made worse off, and the *weak* Pareto principle mandates only strong Pareto-improvements, that is, it mandates

only those distributive moves that make everyone better off (Cohen, 2008, pp. 88-89, n. 4). The state can therefore move from D1 to any of D2, D3 and D4 whilst acting consistently with either version of the Pareto principle, because in all of D2, D3 and D4 no one is made worse off than they are in D1, and D2, D3 and D4 all represent a strong Pareto-improvement on D1. The Pareto principle thus allows for greater inequality than the difference principle, and since Cohen says it often trumps egalitarian justice, the above quotation could be misread as evidence that there is a sense in which he is less egalitarian than Rawls.

Notice that, as it stands, this interpretation overlooks Cohen's reason for thinking that the Pareto principle often trumps egalitarian justice; namely, that human flourishing is more important. As I have argued, there is evidence to suggest that his concern for human flourishing is primarily a concern for alleviating the unnecessary hardship of the worst-off, so that his view that the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency is best understood as a pluralist distributive ethic that combines telic egalitarian and telic prioritarian beliefs. It says that some kind of luck egalitarian social state of affairs – because fair – has non-instrumental value, but that the state should often pursue Pareto-efficiency over a luck egalitarian principle of equality of opportunity because a social state of affairs in which people, and particularly the worst-off, enjoy greater benefits is non-instrumentally more valuable than egalitarian justice. On my interpretation, then, excluding those cases where Cohen thinks the state might prefer to sacrifice or compromise Pareto-efficiency instead of equality of opportunity²³, acting

²³ See section 2.1

consistently with the egalitarian-prioritarian ethic requires, as does acting consistently with the difference principle, all else being equal, that the state reorganize society so that we move from D1 to D3; the state ought to pursue D3 because it is non-instrumentally more valuable than D1, D2 and D4, in virtue of its being the social state of affairs where the worst-off do best. Despite their methodological differences, then, and despite Cohen's attempt to rescue equality from Rawls at the level of fundamental principles of justice, his view as to how the state, all else being equal, ought to balance the competing demands of equality of opportunity and Pareto-efficiency tends towards the realization of a social state of affairs that is no more egalitarian than that which would result from the state implementing the difference principle.

3. The levelling down objection

3.1. Parfit favors prioritarianism over egalitarianism partly because he feels the force of the levelling down objection. This objection is meant to reveal the implausibility of claiming that equality has non-instrumental value and thus the implausibility of telic egalitarianism. If the objection succeeds the telic egalitarian component of Cohen's egalitarian-prioritarian ethic is implausible, and we ought to instead favor some form of deontic egalitarianism or prioritarianism, since neither is committed to the claim that equality has non-instrumental value, and thus neither is susceptible to the levelling down objection. But, as Parfit recognizes, the levelling down objection does not decisively show telic egalitarianism to be implausible.²⁴

²⁴ See Parfit, 2002, p. 115; and Parfit, 2012, p. 401.

If an individual believes an egalitarian state of affairs has non-instrumental value, even if she believes we ought not to pursue it all things considered, she nevertheless believes it is *in one way* better than the relevant inequality regardless of how it is realized. To illustrate, let us consider that famous example of Robert Nozick's where the realization of equality of outcome requires the coercive redistribution of body parts (Nozick, 1974, p. 206). In a world where half the population is sighted and the other half is blind, equality of outcome requires that we redistribute one eye from each of the sighted to each of the blind. If any of the sighted is unwilling to donate an eye to the blind, then, equality of outcome requires coercive redistribution. Of course, to believe that the egalitarian state of affairs in which everyone has one eye is *in one way* better than the relevant inequality, is not to believe that we ought to engage in coercive redistribution of people's eyes. One can believe that the egalitarian state of affairs has non-instrumental value, and believe it does because it is fair, whilst maintaining that other considerations (e.g., Rawlsian basic liberties; control rights of self-ownership; Shefflerian agent-centered prerogatives²⁵) trump equality in this case. But, egalitarian states of affairs can be realized by *levelling down*; that is, by making everyone as badly off as the worst-off. In Nozick's example this requires making everyone blind. To believe an egalitarian state of affairs has non-instrumental value is therefore to believe that making everyone as relevantly badly off as the worst-off is *in one way* better than the relevant inequality. According to the levelling down objection that belief is implausible,

²⁵ These examples are from: Otsuka, 2008, p. 448.

because a state of affairs cannot be *in any way* better than another when it is better for no one. Thus, equality does not have non-instrumental value.

The levelling down objection: To believe an egalitarian state of affairs has non-instrumental value is to believe that its realization by making everyone as badly off as the worst-off is *in one way* better than the relevant inequality. That is implausible, because a state of affairs is not *in any way* better than another state of affairs when it is better for no one. Thus, equality does not have non-instrumental value.²⁶

3.2. Cohen has little to say about the levelling down objection. He points out, as I have (and in a manner that supports my interpretation of his view), only that to believe equality has non-instrumental value is not to believe we ought to level down all things considered.

[T]he egalitarian can say that she would not level down, because equality isn't everything, but nevertheless maintain that equality, as such, is in one way better than its absence: something of value is lost, because there is an *unfairness*, and therefore a kind of injustice, when some have more than others through no relevant fault or choice of anyone. The levelling down objection is not thereby eliminated, for some would deny that a world in which everyone is blind is in *any way* better than one in which some, but

²⁶ For Parfit's description, see Parfit, 2002, p. 98.

not all, can see... But, however that may be, it is important that those who think that the all-blind world is *in one way* better are not thereby committed to plucking out the eyes of the sighted in a world where some are blind and some are not.

(Cohen, 2011h, p. 231)

This pluralist response to the levelling down objection does, as Cohen says, make an important point, but it does not, as Cohen recognizes, refute the objection. The levelling down objection does not hold that to believe equality has non-instrumental value is to be implausibly committed to levelling down all things considered. Rather, it holds that to believe equality has non-instrumental value is to implausibly believe levelling down would be *in one way* better when it cannot be *in any way* better because it is better for no one. In order to refute the levelling down objection telic egalitarians must therefore refute *the person-affecting claim*²⁷, which says that states of affairs cannot be *in any way* better or worse than another when there are *no persons* for whom it affects for better or worse. If the person-affecting claim is false, if states of affairs can be *in one way* better or worse than another when there are *no persons* for whom it is better or worse, *and* an egalitarian state of affairs realized by leveling down is an example of this, it is plausible to claim that levelling down (e.g., the all-blind world) is *in one way* better (because fair) than the relevant inequality, and the levelling down objection fails to disprove the non-instrumental value of equality.

²⁷ Temkin refers to the person-affecting claim as ‘the Slogan’ (Temkin, 2002, p. 132). I prefer to adopt Parfit’s more descriptive name for it (Parfit, 2002, p. 114).

Temkin mounts a sustained challenge to the person-affecting claim on the grounds that it runs contrary to other commonly held beliefs (Temkin, 2002, pp. 137-146).²⁸ For example, in his ‘saints and sinners’ example he appeals to commonly held beliefs about desert. If *A* represents people who live ethically whereas *B* represents mass murders, we tend to believe state of affairs *x*: *A* 8, *B* 2, is *in one way* better than state of affairs *y*: *A* 8, *B* 10, even though state of affairs *x* is better for no one. Correspondingly, as Temkin says, most ‘believe there would be *something* morally bad about the vilest mass murders faring better than the most benign saints, even if [as in state of affairs *y*] there was *no one* for whom it was worse’ (Temkin, 2002, p. 139). If these beliefs are plausible, then so is the belief that states of affairs can be *in one way* better or worse regardless of how persons are affected for better or worse.

Of course, any comprehensive refutation of the person-affecting claim cannot be made solely by appeal to commonly held beliefs, because our commonly held beliefs may not reflect the true nature of morality. To comprehensively refute the person-affecting claim would require defending a meta-ethical theory from which it cannot be derived; a substantial undertaking I shall not attempt. Temkin’s challenge nevertheless provides sufficient reason to doubt its truth, and referring to it, Cohen declares that he too rejects the person-affecting claim (Cohen, 2011h, p. 233).

Yet, even if the person-affecting claim is false, for telic egalitarians to escape the levelling down objection it must additionally be true that equality has non-person-affecting value in the sense that desert has non-person-affecting

²⁸ For the same challenge, see Temkin, 1993, Chapter 9

value in Temkin's saints and sinners example. That is to say, it must be true that there is *something* morally good about the all-blind world as compared with the world in which half are sighted and half are blind. Many think not, and consequently feel the force of the levelling down objection. My intuition, however, is that there is something morally good about the all-blind world as compared with the world in which half are sighted and half are blind, and that something is *fairness*; the all-blind world is fairer than the world in which half are sighted and half are blind *through no fault or choice of their own*. Thus, I share Temkin and Cohen's view that, although we ought not to level down, some kind of luck egalitarian social state of affairs – because fair – has non-instrumental value and thus is in *one way better* than the unequal alternative even when it is better for no one. The force of the levelling down does not therefore, at least in my view, show the telic egalitarian component of Cohen's egalitarian-prioritarian ethic to be implausible.

4. The Otsuka & Voorhoeve objection

4.1. To date, the most prominent objection to prioritarianism comes from Michael Otsuka and Alex Voorhoeve. The essence of their objection is that there is greater priority to benefit the badly-off when we consider one's situation relative to others than when we consider one's situation in isolation from others, and that whereas prioritarianism cannot explain this shift in weighting when we move from intrapersonal to interpersonal cases, it can be explained by telic and/or deontic egalitarian considerations that are present only in interpersonal cases (e.g., the non-instrumental value of equality and/or the comparative

strength of different people's claims to benefit). The upshot, so Otsuka and Voorhoeve argue, is that prioritarianism is implausible. If they are right, so is the telic prioritarian component of Cohen's egalitarian-prioritarian distributive ethic. In defence of Cohen, however, I embrace Martin O'Neill's pluralist response to the Otsuka-Voorhoeve objection, which says that it shows prioritarianism to be *incomplete* rather than implausible. For it is open to any prioritarian, unless she dogmatically believes that prioritarianism accounts for the whole truth about distributive ethics, to explain the shift in weighting between intrapersonal and interpersonal cases by appeal to egalitarian considerations. Consequently, the telic prioritarian component of Cohen's egalitarian-prioritarian distributive ethic is not implausible. And, unlike *non-restricted* pure prioritarianism, as opposed to Andrew Williams's *deontic-restricted* prioritarianism which escapes the Otsuka-Voorhoeve objection²⁹, it can explain the greater priority to benefit the badly-off in interpersonal cases by appeal to the non-instrumental value of equality of opportunity.

Otsuka and Voorhoeve start by asking us to imagine the following intrapersonal case:

Intrapersonal case: An individual will develop a physical impairment and the chance of this impairment being *slight* or *very severe* is equal. There are separate treatments for these impairments. The treatment for the slight impairment entirely cures it and the treatment for the very severe impairment reduces it from very severe to *severe*. Each of these

²⁹ See section 4.2

treatments represents the same gain in utility; ‘slight impairment to full cure’ and ‘very severe impairment to severe impairment’ represent equal utility gains. These treatments work only when administered prior to development of the impairment and only one treatment can be administered. Thus, we must choose between preemptively treating either the slight or very severe impairment when the expected utility gain is equal and the chance of either developing is equal (Otsuka & Voorhoeve, 2009, pp. 171-172).

As the chance of either impairment developing is 50/50, and because either treatment amounts to the same expected utility gain, Otsuka and Voorhoeve argue that it is reasonable to administer either treatment in the intrapersonal case if the affected individual has no preference (Otsuka & Voorhoeve, 2009, pp. 173-175).

In contrast, Otsuka and Voorhoeve ask us to imagine a similar but somewhat different interpersonal case:

Interpersonal case: A group of people will develop physical impairments. Half will develop the slight impairment and half the very severe impairment. As in the intrapersonal case, the treatment for the slight impairment entirely cures it and the treatment for the very severe impairment reduces it from very severe to severe. Again, each treatment represents the same gain in utility and only one treatment can be administered. The interpersonal case differs, however, in that we are able

to identify who will develop which impairment. Thus, whereas in the intrapersonal case either course of action has a 50 percent chance of being effective because we are ignorant as to which impairment the individual will develop, in the interpersonal case either course of action will be 100 percent effective for half the group. We must therefore choose between either preemptively treating those who will develop the slight impairment or those who will develop the very severe impairment, when each subgroup of people is equal in number and stands to gain the same level of utility (Otsuka & Voorhoeve, 2009, p. 174).

Unlike in the intrapersonal case where they consider either course of action reasonable, Otsuka and Voorhoeve argue that the only reasonable course of action in the interpersonal case is to increase the utility of those who stand to become worse off; that is, we ought to treat those who are to become very severely impaired (Otsuka & Voorhoeve, 2009, pp. 174-175).

Prioritarians, of course, would also preemptively treat those who will develop the very severe impairment in the interpersonal case, as they believe we ought to give distributive priority to the worst-off. In the intrapersonal case, however, it appears prioritarians must reject Otsuka and Voorhoeve's claim that, because the chance of either impairment developing is 50/50, and because either treatment amounts to the same expected utility gain, it is reasonable to administer either treatment if the affected individual has no preference. For if prioritarians believe '*utility has diminishing marginal moral importance*' (Parfit, 2002, p. 105), that is, if they believe, from a moral point of view, that utility matters more

the worse off one is and matters less the better off one is, they in turn believe we ought to preemptively treat the very severe impairment rather than the slight impairment in the intrapersonal case. In other words, although the expected utility gain of either course of action is, strictly speaking, equal, for prioritarrians those utility gains are, morally speaking, unequal, because utility is of greater moral importance the worse off one is.

According to Otsuka and Voorhoeve, the failure of prioritarianism to see that either course of action is reasonable in the intrapersonal case is illustrative of its inability to recognize a shift toward greater priority to benefit the badly off when we move from intrapersonal to interpersonal cases. Their ‘crucial argumentative move’ (Otsuka & Voorhoeve, 2009, p. 181), however, is to claim that, even if one doubts their conclusion that it is reasonable to administer either treatment in the intrapersonal case if the affected individual has no preference, a shift in weighting can be denied ‘only on pain of denying the moral significance of the separateness of persons’ (Otsuka & Voorhoeve, 2009, p. 179). This phrase commonly refers to Rawls’s critique of classical utilitarianism for permitting the suffering and/or denial of rights to some if, and for that reason only, the result is a greater sum total of utility across persons (Rawls, 1999, §5). Prioritarrians are not guilty in this respect, for rather than seek to maximize the sum total of utility across persons they give distributive priority to benefiting the worst-off. But, so Otsuka and Voorhoeve argue, prioritarianism fails to take seriously the distinction between persons in the sense that it is insensitive to ‘interpersonal considerations that are essentially relational, such as the [non-instrumental]

badness of inequality or the comparative strength of the claims [to benefit] of different individuals' (Otsuka & Voorhoeve, 2009, p. 185).³⁰

The first way of explaining a shift toward greater priority to benefit the badly off when we move from intrapersonal to interpersonal cases, then, is by appeal to the non-instrumental value of equality of opportunity. In the intrapersonal case the value of equality of opportunity cannot factor in our considerations as to what we ought to do. In the interpersonal case, however, the non-instrumental value of equality of opportunity can explain why we ought to preemptively treat those who will develop the very severe impairment. If we (i) preemptively treat those who will develop the slight impairment a *very* unequal state of affairs will obtain in which, through no fault or choice of their own, half are fully cured and half are very severely impaired. On the other hand, if we (ii) preemptively treat those who will develop the very severe impairment a *less* unequal state of affairs will obtain in which, through no fault or choice of their own, half are severely impaired and half are slightly impaired. Thus, although neither course of action prevents people from suffering inequality for which they cannot be held personally responsible, as it does not reflect fault or choice on their part, course of action (ii) reduces that morally arbitrary inequality whereas course of action (i) increases it. All else being equal, we ought therefore to do (ii) because it produces a state of affairs that is non-instrumentally more valuable – because fairer – than the state of affairs that would result from doing (i).

Prioritarians might attempt to resist this explanation by appeal to the levelling down objection; if one is moved, as I am not, to embrace either deontic

³⁰ In a follow up article, Otsuka argues that prioritarianism also fails to take seriously the distinction between person in the sense that it is insensitive to the presence or absence of prudential justifications (Otsuka, 2012, pp. 367-368).

egalitarianism or prioritarianism in light of the levelling down objection, she doubts equality has non-instrumental value, and will therefore doubt the above explanation of the shift toward greater priority to benefit the badly off when we move from intrapersonal to interpersonal cases. However, there is a deontic egalitarian explanation of the shift, that is, an explanation which does not appeal to the non-instrumental value of equality and so sidesteps the levelling down objection, which appeals to the comparative strength of claims to benefit of different individuals. As Otsuka and Voorhoeve argue, in the intrapersonal case no such claims can be made, but in the interpersonal case ‘[t]hose who are relatively worse off have stronger claims to a given increment of improvement simply by virtue of the fact that it is, other things equal, harder to justify improving the situation of someone who is better off rather than someone who is worse off’ (Otsuka & Voorhoeve, 2009, p. 183).

The Otsuka and Voorhoeve objection: There is greater priority to benefit badly-off people when we move from intrapersonal to interpersonal cases. This shift in weighting can be explained by the non-instrumental value of equality of opportunity and/or the comparative strength of people’s competing claims to benefit. Prioritarianism, however, cannot account for this shift in weighting because it pays no attention to people’s relative levels of benefit. Thus, we ought to doubt its plausibility as a distributive ethic.

4.2. In response to the Otsuka-Voorhoeve objection Andrew Williams outlines a *deontic-restricted* prioritarianism which, because it explains the shift in weighting when we move from intrapersonal to interpersonal cases without appeal to egalitarian considerations, serves to reject Otsuka and Voorhoeve's claim that prioritarianism is implausible. It is a deontic view because, rather than being a view about which outcomes would be better, it is a view only about what we ought to do. Specifically, in the interpersonal case, it says that we ought to preemptively treat those who will develop the very severe impairment, rather than those who will develop the slight impairment, because the former group has stronger claims to benefit than the latter group in light of utility having diminishing marginal moral importance. And, it is restrictive in the sense that, 'the conviction that benefiting people matters more as they become worse off does not apply to all our decisions but instead is triggered by a specific context in which we face interpersonal conflict or must choose between promoting personal interests and impersonal values' (Williams, 2012, p. 323). In other words, the shift in weighting when we move from intrapersonal to interpersonal cases is explained by restricting the prioritarian conviction that utility has diminishing marginal moral importance only to interpersonal cases. Thus, in the intrapersonal case, where the chance of either impairment developing is equal and each treatment amounts to the same expected utility gain, it is open to deontic-restricted prioritarrians to agree with Otsuka and Voorhoeve that it is reasonable to administer either treatment if the affected individual has no preference.

Despite showing that the Otsuka-Voorhoeve objection does not show *all* pure prioritarian views to be implausible, I have doubts about the restriction

Williams employs. For with respect to the intrapersonal case, I do not believe that, because the chance of either impairment developing is equal and because either treatment amounts to the same expected utility gain, it is reasonable to administer either treatment if the affected individual has no preference. On the contrary, because the affected individual is just as likely to develop the very severe impairment as she is the slight impairment, I believe that, if she has no preference, we ought to preemptively treat her for the very severe impairment because utility has diminishing marginal moral importance; morally speaking, she has more to gain from us preemptively treating her for the very severe impairment than she does from us preemptively treating her for the slight impairment. If that is the right view, so that we ought not to restrict the prioritarian conviction that utility has diminishing marginal moral importance only to interpersonal cases, prioritarianism is susceptible to the Otsuka-Voorhoeve objection.

An alternative response to the Otsuka-Voorhoeve objection, which is particularly well suited to defending the prioritarian component of Cohen's egalitarian-prioritarian ethic, is Martin O'Neill's pluralist reply.³¹ The basis of O'Neill's reply is a distinction he draws between *fundamentalist* and *pluralist* prioritarrians. Fundamentalist prioritarrians believe that prioritarianism is a complete ethical theory of distribution and denies that egalitarian considerations have anything to add. In contrast, pluralist prioritarrians believe that prioritarianism is an incomplete distributive ethic and that egalitarian considerations ought to feature in our moral thinking in interpersonal cases

³¹ For other responses to the Otsuka-Voorhoeve objection, see (for example) Parfit, 2012; and Porter, 2012.

(O'Neill, 2012, p. 343). Thus, unlike the fundamentalist prioritarian, the pluralist prioritarian can respond to the Otsuka-Voorhoeve objection simply by pointing out that, rather than show prioritarianism to be implausible, it shows prioritarianism only to be incomplete. It is open to the pluralist prioritarian to believe that there is greater priority to benefit badly-off people when we consider one's situation relative to others than when we consider one's situation in isolation from others, and to explain that shift in weighting by appeal to egalitarian considerations. As O'Neill says, the incompleteness of prioritarianism 'is surely itself no fatal failing, given that it would be fanciful to think that any 'single principle' distributive view, whether egalitarian or prioritarian, could capture the full truth about the ethics of distribution' (O'Neill, 2012, p. 344).

Whilst outlining this reply, O'Neill rightly says that there is 'no inconsistency in holding a complex distributive view that allows a role for *deontic* egalitarian considerations... while nevertheless endorsing the Priority View' (O'Neill, 2012, p. 343, emphasis added). It is unclear whether he thinks the same is true with respect to *telic* egalitarian considerations. Yet, just as there is no inconsistency in holding the former distributive view, there is no inconsistency in holding a pluralist distributive view, as I have interpreted Cohen as holding, which allows a role for *telic* egalitarian considerations while nevertheless embracing *telic* prioritarianism. There is no inconsistency in holding that some type of egalitarian social state of affairs – because fair – has non-instrumental value, but that the state should often pursue Pareto-efficiency over equality because a social state of affairs in which people, and particularly the

worst-off, enjoy greater benefits is non-instrumentally more valuable than egalitarian justice.

What I have interpreted as the prioritarian component of Cohen's egalitarian-prioritarian ethic is not therefore brought into question by the Otsuka and Voorhoeve objection. Its telic prioritarian component cannot explain the shift towards greater priority to benefit badly-off people when we move from intrapersonal to interpersonal cases. But its telic egalitarian component can explain that shift on grounds that in interpersonal but not in intrapersonal cases, prioritizing distributive benefits to the worst-off will often have the effect (as in the above interpersonal case) of reducing inequalities that do not reflect fault or choice on the part of the bearer, and therefore of realizing a non-instrumentally more valuable – because fairer – state of affairs. Cohen's egalitarian-prioritarian ethic is thus all the more plausible for acknowledging the moral significance of both prioritarian and egalitarian considerations.

5. Conclusion

The focus of this chapter has been how Cohen understands the relationship between equality of opportunity and Pareto-efficiency in practice. As we have seen, in practice, Cohen believes the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency. This is the third view I identify with Cohen's positive contribution to the question of what type of society we ought to seek.

In identifying and clarifying the view, I began with Cohen's concession in *Rescuing* Part I that, under the influence of a distinction between justice and

optimal policy, his view is that distributive justice *is* some kind of equality of opportunity, but that Pareto-efficiency often trumps distributive justice. In section 2.1 I clarified the view by considering it in the context of: (i) Cohen's distinction between fundamental principles of justice and *state* rules of regulation; (ii) his previously noted remarks with respect to the equality-Pareto-freedom trilemma; (iii) his own clarifications in a section on justice and Pareto-efficiency in *Rescuing* Part II; and (iv) conclusions he draws elsewhere that match those drawn in the relevant section from *Rescuing* Part II. These clarifications led to a more detailed view being fleshed out. It says that when a Pareto-efficient alternative to distributive justice, which is some kind of luck egalitarian principle of equality of opportunity, is feasible, the state should often pursue Pareto-efficiency over equality of opportunity because human flourishing is of greater importance than distributive justice. The state should *often*, as opposed to always, take this course of action because in cases where the pursuit of Pareto-efficiency means acceding to unjust demands and little rests on not acceding to them, and perhaps in cases where the pursuit of Pareto-efficiency means compromising equality of opportunity to an unacceptable degree, the state might prefer to sacrifice or compromise Pareto-efficiency instead of equality of opportunity.

Further clarifying the view in section 2.2, I considered where it sits in relation to Parfit's distinctions between teleological and deontological egalitarianism, and between egalitarianism and prioritarianism. This led to the conclusion that Cohen's view, that the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency, is best understood as a

pluralist distributive ethic that combines telic egalitarian and telic prioritarian beliefs. It says that some kind of luck egalitarian social state of affairs – because fair – has non-instrumental value, but the state should often pursue Pareto-efficiency over a luck egalitarian principle of equality of opportunity because a social state of affairs in which people, and particularly the worst-off, enjoy greater benefits is non-instrumentally more valuable than egalitarian justice.

So clarified, Cohen's view, that the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency, faces objections from either side of the "equality, priority or what?" debate. Thus, I proceeded to evaluate the view, in sections 3 and 4 respectively, by considering how it fares in relation to the most prominent objections from either side of the debate; the levelling down objection to telic egalitarianism, and the Otsuka-Voorhoeve objection to prioritarianism.

In response to the levelling down objection I argued, by drawing on arguments from Temkin, that its success depends on whether equality has non-person-affecting value. Although many believe equality does not have non-person-affecting value in the way desert appears to in Temkin's saints and sinners example, I share Temkin and Cohen's belief that, although we ought not to level down, some kind of luck egalitarian social state of affairs – because fair – has non-instrumental value and thus is in *one way better* than the unequal alternative even when it is better for no one. In Nozick famous example, I believe there is something morally good about the all-blind world as compared with the world in which half are sighted and half are blind merely as a consequence of brute luck, and that something is *fairness*; the all-blind world is *fairer* than the

world in which half are sighted and half are blind merely due to differences in fortune. I therefore reached the conclusion that the levelling down objection does not decisively show, as Parfit himself recognizes, telic egalitarianism to be implausible, and thus nor does it decisively show the telic egalitarian component of Cohen's view to be implausible.

In response to the Otsuka-Voorhoeve objection I argued, by drawing on arguments from O'Neill, that it shows prioritarianism to be incomplete rather than implausible. For it is open to any prioritarian, unless she dogmatically believes the priority view accounts for the whole truth about distributive ethics, to explain the greater priority to benefit the badly-off when we move from intrapersonal to interpersonal cases by appeal to egalitarian considerations. Consequently, the telic prioritarian component of Cohen's egalitarian-prioritarian ethic is not implausible. And, unlike *non-restricted* pure prioritarianism, it can explain the greater priority to benefit the badly-off in interpersonal cases by appeal to the non-instrumental value of equality.

My evaluation of the third view I identify with Cohen's positive contribution to the question of what type of society we ought to seek therefore takes the form of a limited defence. For although I lean toward a luck egalitarianism where opportunities are specified in terms of resources rather than advantage, and ultimately come to embrace an alternative distributive ethic in Chapter 4, I conclude that neither the levelling down objection nor the Otsuka-Voorhoeve objection shows Cohen's egalitarian-prioritarian ethic to be implausible.

Chapter 4

The Community Principle

1. Introduction

This chapter focuses on how Cohen understands the relationship between equality of opportunity and community in principle. As we shall see, Cohen holds the view that, in principle, equality of opportunity ought to be constrained by a principle of community that is realized by means of voluntary non-state agency. This is the fourth view I identify with his positive contribution to the question of what type of society we ought to seek.

Evidence as to how Cohen understands the relationship between equality of opportunity and community in principle is to be found in *Why Not Socialism?* As explained in Chapter 1, Cohen is a luck egalitarian and does not therefore object to inequalities that result from a voluntary choice on the part of the bearer, because she can, in virtue of that choice, be held personally responsible for her relative disadvantage.¹ Yet in *Why Not Socialism?* Cohen argues that when inequalities of this sort obtain on a sufficiently large scale they nevertheless undermine community, and ought therefore to be tempered by a principle of community. As I interpret *the community principle* it tempers luck egalitarianism by keeping the inequalities it permits within a range that ensures people's lives, where possible, labor under similar challenges as a result, where necessary, of the better-off voluntarily helping the worse-off in the form of resource transfers. Cohen therefore embraces a community-constrained luck egalitarianism, and in

¹ See Chapter 1, sections 2.1 and 3.2

that sense, he compromises equality of opportunity in the name of realizing community.

As noted previously, however, I am more concerned with what we ought to do in practice than with what is possible in principle, and so I evaluate Cohen's community-constrained luck egalitarianism in much the same way as I evaluated his ethical solution to the equality-Pareto-freedom trilemma in Chapter 2. That is, I evaluate his community-constrained luck egalitarianism in light of people's predictable use of their right, for which Cohen allows, to pursue self-interest to some reasonable extent (even when that makes things worse than they need be for badly off people). In this context, when people are guaranteed a decent life and suffer no disadvantage above the sufficiency threshold for which they cannot be held personally responsible, voluntary helping the worse-off falls within the better-off's prerogative not to do. As in all probability many of the better-off will exercise that prerogative, and because luck egalitarianism ought to be tempered to avoid abandonment of the imprudent to unnecessary suffering, I conclude that equality of opportunity ought to be constrained in both principle and in practice, and in practice it ought to be constrained by a sufficiency qualification that is realized by means of state coercion, rather than by Cohen's community principle.

2. The community principle

2.1. Cohen's strategy in *Why Not Socialism?* is to argue that people embrace a socialist ideal when camping, before attempting to refute, or at least question, reasons as to why that ideal is not also feasible and desirable at the societal level.

He observes that when camping, ‘even most *antiegalitarians*, accept, indeed, take for granted, norms of equality and reciprocity’ (Cohen, 2009, p. 5). The alternative in which people assert ownership rights over their property and talents and attempt to engage in market type bargaining is routinely rejected. For example, refusing to lend one’s knife to a fellow camper without gaining something in return, or claiming a right to a larger meal than one’s fellow campers because as a talented fisherman you provided a larger share of the ingredients, are behaviors that are unlikely to be tolerated by the group (Cohen, 2009, pp. 5-9). From this observation Cohen derives that camping trips tend to realize two principles: *socialist equality of opportunity* and *the community principle* (Cohen, 2009, pp. 12-13).

By *socialist* equality of opportunity Cohen means only that it constitutes what I referred to in Chapter 1 as a *radical* principle of equality of opportunity.² That is to say, as Cohen does say of socialist equality of opportunity, that it ‘seeks to correct for *all* unchosen disadvantages, disadvantages, that is, for which the agent cannot herself reasonably be held responsible, whether they be disadvantages that reflect social misfortune or disadvantages that reflect natural misfortune (Cohen, 2009, pp. 17-18). Thus, despite socialist equality of opportunity lacking in detail as compared with Cohen’s principle of equal access to advantage, because it is agnostic on whether opportunities ought to be specified in terms of welfare, capabilities, resources or some hybrid, both are luck egalitarian principles. For each principle holds that, all else being equal, inequalities that result from brute luck are *prima facie* unjust because the bearer

² See Chapter 1, section 2.1

cannot be held personally responsible for her relative disadvantage, whereas inequalities that result from voluntary choice on the part of the bearer are *prima facie* just because she can, in virtue of that choice, be held personally responsible for her relative disadvantage.

That a luck egalitarian principle of equality of opportunity is realized when camping is derived from the campers unwillingness to tolerate differences in talent resulting in unequal distributions, as in the above case of the talented fisherman, for to accept her claim to a larger meal would be to tolerate an inequality between her and her fellow campers that fails to reflect a choice for which the disadvantaged can be held personally responsible.

Since luck egalitarianism holds that, all else being equal, inequalities that result from voluntary choice on the part of the bearer are *prima facie* just because she can, in virtue of that choice, be held personally responsible for her relative disadvantage, socialist equality of opportunity does not forbid inequalities of this kind. For example, Cohen highlights the fact that socialist equality of opportunity permits both regrettable choice inequalities and option luck inequalities (which are not mutually exclusive).

Regrettable choice inequality: People suffer from regrettable choice inequality when they come to regret a voluntary choice that results in inequality. For example, imagine that *A* and *B* are situated equally in every relevant respect, including in their job preferences and in their capacity to expend effort and/or care. *A* voluntarily chooses to neglect her job opportunities whereas *B* voluntarily chooses to examine them with

great care and attention. In hindsight, *A* comes to regret neglecting her job opportunities because her income suffers as a consequence. But, any resulting inequality of income between *A* and *B* that is traceable to *A*'s voluntary choice to neglect her job opportunities, regardless of whether *A* regrets that choice, is an inequality for which a luck egalitarian principle of equality of opportunity does not compensate because *A* is personally responsible for her relative disadvantage (Cohen, 2009, pp. 26-27).

Option luck inequality: People suffer from option luck inequality when inequality results from a voluntary choice on the part of the bearer to partake in some sort of gamble or risk. For example, imagine that *C* and *D* are situated equally in every relevant respect, including in their disposition toward gambling and in their stake of £100. In the absence of coercion and with complete knowledge of the relevant facts, *C* and *D* both voluntarily choose to bet on a coin toss whereby the loser must pay the winner £50. *C* loses the coin toss and pays *D* £50 so that *C* comes to have £50 and *D* £150; *C* suffers from bad option luck. The resulting inequality is an inequality for which a luck egalitarian principle of equality of opportunity does not compensate because *C* is personally responsible for her relative disadvantage (Cohen, 2009, pp. 30-31).

Despite being consistent with socialist equality of opportunity, Cohen argues that regrettable choice and/or option luck inequalities are 'nevertheless repugnant to socialists when they obtain on a sufficiently large scale, because

they then contradict community: community is put under strain when large inequalities obtain. The sway of socialist equality of opportunity must therefore be tempered by a principle of community, if society is to display the socialist character that makes the camping trip attractive' (Cohen, 2009, p. 34). This point is made more definitively, and for the same reasons, when he says that the relevant 'inequalities that cannot be forbidden in the name of socialist equality of opportunity should nevertheless be forbidden, in the name of community' (Cohen, 2009, p. 37).

2.2. According to Cohen, 'the requirement of community that is central here is that people care about, and, where necessary and possible, care for, one another, and, too, care that they care about one another' (Cohen, 2009, pp. 34-35). The community principle that tempers socialist equality of opportunity therefore has what Cohen calls 'two modes of communal caring' (Cohen, 2009, p. 35). In particular, it is the community principle's first mode of communal caring that does the tempering, and by considering what it is supposed to achieve, we gain insight as to the means by which it tempers equality of opportunity.

In setting out what the community principle's first mode achieves by tempering those inequalities consistent with luck egalitarianism, Cohen begins with the claim that, 'we cannot enjoy full community, you and I, if you make, and keep, say, ten times as much money as I do, because my life will then labor under challenges that you will never face, challenges that you could help me with, but do not, because you keep your money' (Cohen, 2009, p. 35). To illustrate such deficits of community he provides the following example.

The bus commute

I am rich, and I live an easy life, whereas you are poor, because of regrettable choices and/or bad option luck, and not, therefore because of any lack of equality of opportunity. You have to ride the crowded bus every day, whereas I pass you by in my comfortable car. One day, however, I must take the bus, because my wife needs the car. I can reasonably complain about that to a fellow car-driver, but not to you. I can't say to you: "It's awful that I have to take the bus today." There is a lack of community between us of just the sort that naturally obtains between me and the fellow car-driver. And it will show itself in many other ways, for we enjoy widely different powers to care for ourselves, to protect and care for offspring, to avoid danger, and so on.

(Cohen, 2009, pp. 35-36)

Unfortunately, Cohen provides little more than this by way of explanation and so exactly what it is for people to 'enjoy full community' is somewhat open to interpretation. It's clear that he thinks the reasonableness of his complaint is speaker-audience relative; its reasonableness lies not in its validity but in whether its audience is likely to empathize. Cohen thinks it would be reasonable to direct his complaint to a fellow car-driver because her life labors under similar challenges that do not include regular bus-commuting, thus, she is likely to empathize. But, he thinks it would be unreasonable to direct the same complaint

to a regular bus-commuter because she faces the relevant challenge every day and is therefore unlikely to empathize.

However, when trying to make sense of how Cohen understands the idea of people enjoying full community the above example, specifically its interpersonal utterance, serves to confuse rather than to clarify. Instead, we ought to pay greater attention to what Cohen says in the quotation immediately prior to it. There is no mention here of complaints or any other form of interpersonal utterance. On the contrary, what Cohen emphasizes is that people cannot enjoy full community (i) when large regrettable choice and/or option luck inequalities obtain because people's lives then labor under different challenges, and (ii) that the challenges faced by the poor could be made easier by help, in the form of resources, from the rich.

If (i) is constitutive and (ii) merely incidental of people not enjoying full community, we ought to interpret Cohen as thinking that people enjoy full community when large regrettable choice and/or option luck inequalities are kept within a range that ensures people's lives labor under *similar* challenges. The italicized qualification is important because people's lives need not then labor under *identical* challenges, which would be both undesirable and implausible; undesirable because it would require the denial of people's freedom to pursue their own conception of the good life, and implausible because even those who share the same conception of the good life inevitably lead lives that labor under somewhat different challenges.

If, however, (ii) is also constitutive of people not enjoying full community, we ought to interpret Cohen as thinking that people enjoy full

community not only when large regrettable choice and/or option luck inequalities are kept within a range that ensures people's lives labor under similar challenges, but that people enjoy full community when this occurs as a result, where necessary, of the better-off transferring resources to the worse-off. Since there will be cases where it is impossible to bring about similarity of challenge through redistribution of resources, as in cases of severe physical and/or mental impairment, we ought to add the qualification that similarity of challenge is a condition of people enjoying full community only when its realization is possible as a result of such help.

I interpret Cohen as thinking that both (i) and (ii) are constitutive of people not enjoying full community. For as noted at the beginning of this subsection, it is central to Cohen's understanding of community that, where necessary and possible, people care for one another, and that people care that they care about one another. This strongly suggests that, for Cohen, not only is it constitutive of people enjoying full community that they care for one another, but that it is constitutive of people enjoying full community that they *voluntarily* care for one another. Miriam Ronzoni likewise interprets voluntariness as being central to the community principle's first mode, for she derives from it that the inequalities permitted by socialist equality of opportunity 'either never arise or are freely mitigated or cancelled out by the *voluntary* actions of those who are better off, in order to maintain the ideal of communal life' (Ronzoni, 2012, p. 173, emphasis added). I therefore interpret the community principle's first mode of communal caring as follows.

Mode 1. *Communal caring as full community*

People enjoy full community when large regrettable choice and/or option luck inequalities are kept within a range that ensures people's lives, where possible, labor under similar challenges as a result, where necessary, of the better-off voluntarily helping the worse-off in the form of resource transfers.

2.3. The community principle's second mode Cohen names *communal reciprocity*. As Cohen recognizes, this second mode of communal caring 'is not strictly required' to temper large regrettable choice and/or option luck inequalities, but he nevertheless considers it to be 'of supreme importance' to the socialist ideal (Cohen, 2009, p. 35). Fortunately, Cohen gives a far clearer and more detailed explanation of the community principle's second mode.

Mode 2. *Communal caring as communal reciprocity*

Communal reciprocity is the antimarket principle according to which I serve you not because of what I can get in return by doing so but because you need or want my service, and you, for the same reason, serve me... [T]here is indeed an expectation of reciprocation, but it differs critically from the reciprocation expected in market motivation. If I am a marketeer, then I am willing to serve, but only in order to *be* served..., [whereas] a nonmarket cooperator relishes co-operation itself: what I want, as a non-marketeer, is that we serve each other; and when I serve,

instead of trying to get whatever I can get, I do not regard my action as, all things considered, a sacrifice... The relationship between us under communal reciprocity is not the market-instrumental one in which I give because I get, but the noninstrumental one in which I give because you need, or want, and in which I expect a comparable generosity from you.

(Cohen, 2009, pp. 39-43)³

That communal reciprocity is realized when camping is evident in the fact that campers help each other, with an expectation of comparable generosity, to overcome certain challenges, such as tent building, fire building, cooking, and so on. It should be noted, however, that despite being presented as derivative of relations between people when camping, there is strong evidence to suggest that in arguing for communal reciprocity Cohen takes inspiration from Karl Marx's vision of higher communism.

In the *Critique of the Gotha Programme*, Marx famously gives an account as to how society's resources will be distributed in the lower and higher phases of communism. In the lower phase (the initial phase after the fall of capitalism) resources will be distributed in accordance with people's labor contribution minus a deduction for common funds (the contribution principle). Despite ownership of the means of production no longer playing a distributive role, Marx objects to the contribution principle because 'it tacitly recognizes unequal individual endowment and thus productive capacity as natural

³ For similar descriptions of communal reciprocity, see: Cohen, 1995, p. 262; and Cohen, 2011g, pp. 217-218.

privileges' (Marx, 1977, pp. 568-569). In other words, Marx recognizes that because of differences in people's natural abilities the contribution principle will arbitrarily reward some more than others, and because of differences in people's circumstances, it may also reward those who are less needy than others. For example, if *A* has greater productive talent than *B*, then *A* will contribute more to society's sum total of resources than *B* over the same period of hours worked. And, because the contribution principle holds that people receive the equivalent of what they contribute minus a deduction for common funds, *A* will consequently receive more than *B* for the same period of hours worked. Unlike luck egalitarians who would primarily be concerned with the morally arbitrary nature of this income inequality, Marx is concerned with the possibility that *B* may have greater needs than *A*. For example, *B* may have a large family to support whereas *A* may have no dependants, or *B*'s self-realizing needs may be greater than *A*'s because her creative pursuits are more expensive. The lower phase of communism therefore remains 'stigmatized by a bourgeois limitation' (Marx, 1977, p. 568). But in the higher phase of communism, 'after the productive forces have also increased with the all round development of the individual, and all the springs of co-operative wealth flow more abundantly..., society [can] inscribe on its banners: from each according to his ability, to each according to his needs' (the needs principle) (Marx, 1977, p. 569).

Elsewhere Cohen says that although we may debate exactly what it is to contribute according to ability and receive according to need, 'the unambiguous message of [the needs principle] is that what you get is *not* a function of what you give, that contribution and benefit are separate matters. Here the relationship

between people is *not the instrumental one in which I give because I get, but the wholly non-instrumental one in which I give because you need*' (Cohen, 2011g, p. 219; emphasis added). According to Cohen, then, the relationship between people that ensues under the needs principle is almost identical to that of communal reciprocity. For as the italicization is meant to emphasize, Cohen's interpretation here mirrors the final sentence of his explanation of communal reciprocity except for one difference (see above): whereas relations between people under the needs principle are said to be *wholly* non-instrumental, relations of communal reciprocity incorporate a caveat against free riding since there is an expectation of comparable generosity from others. Nevertheless, it seems clear that Cohen's second mode of communal caring is inspired by Marx's needs principle.

2.4. Nicholas Vrousalis likewise recognizes that Cohen's community principle takes inspiration from Marx, but he misinterprets it as being related to Cohen's idea of a *justificatory community*. He claims that in *Why Not Socialism?* Cohen 'endorses the idea of a justificatory community, previously rehearsed in *Rescuing Justice and Equality*, and dubs the relations such community embraces "communal reciprocity"' (Vrousalis, 2010, p. 206). Then, he later claims (somewhat contradictorily because now he's referring to the principle's first mode whereas before he was referring to the second) that the principle's "first mode" is something like justificatory community' (Vrousalis, 2012, p.156). Yet neither of the principle's modes of communal caring reflects justificatory community.

Cohen's idea of a justificatory community is a state of affairs that obtains when a group of people can justify their actions to one another. It requires that an argument for the justification of one's actions is capable of passing the aforementioned interpersonal test.⁴ According to this test, if the person or group to whom a justificatory argument is presented can offer a valid rejection, then the argument fails to justify the actions, or intended actions, of the person or group presenting the argument (Cohen, 2008, p. 42). If a justificatory argument fails the interpersonal test, 'then anyone proposing that justification in effect represents the people it mentions as *pro tanto* out of community with one another' (Cohen, 2008, p. 45). A justificatory community, then, does not necessarily reflect communal reciprocity; the former is a state of affairs that obtains when a group of persons can justify their actions to one another, whereas the latter is a state of affairs that obtains when people give because others need and/or want and in which there is an expectation of comparable generosity.

Vrousalis's claim that the principle's first mode 'is something like justificatory community' involves drawing a comparison between the bus commute example, which I have argued serves only to confuse rather than to clarify the first mode, and the previously discussed incentives case.⁵ As we saw in Chapter 2, Cohen argues that the incentives argument for inequality fails the interpersonal test.

The incentives case: The large rewards enjoyed by the talented have been reduced due to a rise in the top rate of income tax from 40 to 60 percent.

⁴ See Chapter 2, section 2.2

⁵ See Chapter 2, section 2.2

Against this tax rise the talented say to the worst-off: “Public policy should make the worst off people (in this case, as it happens, you) better off. If the top tax goes up to 60 percent, we shall work less hard, and, as a result, the position of the poor (your position) will be worse. So the top tax on our income should not be raised to 60 percent” (Cohen, 2008, p. 59). To that, the worst-off can reply: “Given that you would still be much better off than we are if you worked as you do now at the 60 percent tax, what justifies your intention to work less if the tax rises to that level?” (Cohen, 2008, p. 60). Absent controversial appeals to entitlement and desert the talented appear unable to answer that question. They cannot claim that large rewards are necessary to make the worst-off better off, because it is merely their disposition to vary their productivity relative to their reward that makes it necessary. Thus, the incentives argument fails the interpersonal test when offered as a justificatory argument by the talented to the worst-off, and a justificatory community does not obtain.

Vrousalis recognizes that the incentives case and the bus commute example differ in important respects, but he nevertheless believes there to be ‘strong textual evidence that Cohen views the lack of justificatory togetherness... as relevantly similar’ (Vrousalis, 2012, p. 154, n. 31). To see this, he asks us to compare the above quoted passages from *Rescuing* and *Why Not Socialism?* But if we do, the evidence is to the contrary.

With respect to the incentives case, Cohen views there to be a lack of justificatory togetherness in the sense that the talented cannot justify their actions

to the worst-off; any attempt on the part of the talented to justify their actions to the worst-off, so Cohen argues, would likely fail the interpersonal test. But that is not true of the bus commute example, which does not employ the interpersonal test, and even if it did, there is no reason to think that Cohen would be unable to justify to the regular bus-commuter his usually driving to work, because unlike the worst-off in the incentives case, the regular bus commuter is said to be personally responsible for her relative disadvantage. As Richard Miller argues, the principle of community that Cohen develops in *Why Not Socialism?* ‘is not the abstract [justificatory] community that he emphasizes in *Rescuing...* It is community in the ordinary sense, the sharing and caring celebrated as making for a wonderful world in a left-wing song of his childhood’ (Miller, 2010, p. 249). It is also worth noting that when considering whether people ought to share in a justificatory community, Cohen makes no reference to the importance of ‘full community’ (as clarified above) or communal reciprocity. Instead, he appeals to the value of democracy by claiming: ‘it diminishes the democratic character of a society if it is not... [a justificatory community], since we do not make policy *together* if we make it in light of what some of us do that cannot be justified to others’ (Cohen, 2008, p. 45).

That Cohen uses the bus commute for illustrative purposes might appear to undermine my interpretation and lend support to Vrousalis’s alternative, because although it does not employ the interpersonal test, it does, like the incentives case, make reference to interpersonal utterances. It would be incorrect, however, to assume that whenever Cohen refers to interpersonal utterances that he has justificatory community in mind, because his interest with interpersonal

utterances concerns ‘the general point... that there are many ways, some more interesting than others, in which an argument’s persuasive value can be speaker-audience relative’ (Cohen, 2008, p. 36).

Cohen provides various examples of this, including a slightly different articulation of the bus commute example. In this instance, he says that due to the inconvenience of taking the bus he might be able to persuade a fellow-middle class friend that he has ‘a right to be grumpy,’ but that he is unlikely to be able to persuade a carless fellow bus passenger to reach the same conclusion (Cohen, 2008, p. 36). The manner in which the value of his argument is speaker-audience relative, then, has nothing to do with him justifying his actions to others, and everything to do with whether the speaker and audience face the same or different challenge; that Cohen and the regular bus commuter do not face the same challenge with respect to how they commute to work effects the persuasive value of his claim to a right to be grumpy, because as a consequence of her situation the regular bus commuter will fail to empathize.

Another example Cohen uses to demonstrate his point that there are many ways in which an argument’s persuasive value can be speaker-audience relative, and which for my purposes again shows that he does not always have justificatory community in mind when referring to interpersonal utterances, concerns interpersonal utterances of a hypocritical nature. Specifically, with respect to an Israeli ambassador’s condemnation of Palestinian acts of political violence, Cohen argues that regardless of whether an act is condemnable, one’s right to condemn it is questionable when ‘you are *yourself* responsible for something similar, or worse..., [or when] you are *yourself* responsible, or at least

coresponsible, for the very thing that you are condemning' (Cohen, 2013b, p. 126). The interpersonal utterance in such cases is not an attempt by the speaker to justify their actions to the audience, rather, it is an attempt by the speaker at condemning the actions of others, and its persuasive value is speaker-audience relative because if the audience can respond with accusations of hypocrisy then its persuasive value is diminished. When evaluating interpersonal utterances of a hypocritical nature, then, Cohen does not have in mind justificatory community. As Cohen notes with respect to the case of the Israeli ambassador, the interpersonal test, and therefore justificatory community, is not a feature of his argument (Cohen, 2013b, p. 119, n. 8).

2.5. To complete my interpretation of the community principle I now clarify its value. Greater insight in this respect can be gained by comparing it to other conceptions of community. A problem, however, is that the concept of community has been somewhat neglected by contemporary analytical political philosophers. Those familiar with the liberal-communitarian debate and its prominence during the 1980s may look upon that claim with skepticism, as the differing communitarian critiques of (predominantly Rawlsian) liberalism are labeled such because they each appeal in some way to the concept of community.⁶ The communitarian literature, however, as Andrew Mason argues, contains no detailed conceptualization of community or explanation of its value (Mason, 2000, p. 2). Fortunately for my purposes, Mason explores two detailed

⁶ For a comprehensive account of the liberal-communitarian debate, see Mulhall & Swift, 1996.

conceptions of community: the *ordinary* conception and the *moralized* conception.

The ordinary conception has four constitutive elements. The first is (i) *a shared way of life*. This ensues when a group of people participate in a ‘a set of rule governed practices, which are at least loosely woven together, and which constitute at least some central areas of social, political and economic activity’ (Mason, 2000, p. 22). The second element is (ii) *identification*, because one normally identifies with a group by ‘endorsing its practices and seeking to promote its interests, whilst regarding her well-being as intimately linked to its flourishing’ (Mason, 2000, p. 23). The third element is (iii) *shared values*, which requires not only that each member endorse the practices and interests of the group, but that each member ‘perceive[s] them as valuable, whether instrumentally or non-instrumentally, and see[s] her concerns reflected in them’ (Mason, 2000, p. 23). None of these three elements equate to membership, however, and so Mason says that ‘a group of people constitute a community of the ideal type only when each recognizes the other as belonging to it’ (Mason, 2000, p. 25). This is the fourth element, (iv) *mutual recognition*.

The moralized conception is likewise comprised of elements i-iv. What makes it distinct from the ordinary conception is that it has two additional constitutive elements. The first is (v) *solidarity as mutual concern*, which requires that people, at the very least, ‘give each other’s interests some non-instrumental weight in their practical reasoning’ (Mason, 2000, p. 27). The second, (vi) *non-exploitation*, requires that no systematic exploitation exists between the people of a community (Mason, 2000, p. 27).

Mason's discussion of how his conceptions of community have instrumental value bears no resemblance to Cohen's community principle and so it would be tangential to cover.⁷ His explanation as to how his conceptions of community have non-instrumental value, however, serves to clarify how Cohen's community principle has non-instrumental value.

First and foremost, Mason argues that his moralized conception of community clearly has non-instrumental value because relationships between people that reflect (v) solidarity as mutual concern and (vi) non-exploitation 'are properly valued for their own sake' (Mason, 2000, p. 50). Although Cohen's community principle bears no resemblance to element vi, its second mode of communal caring is similar to element v. For just as solidarity as mutual concern obtains when people give each other's interests some non-instrumental weight when considering how to act, communal reciprocity is a non-instrumental relationship that obtains when people give because others need, or want, and expect comparable generosity in return. As Mason argues, non-instrumental caring for others clearly has value in itself. And, although the principle's first mode of communal caring is not a reciprocal relationship, it too involves non-instrumental caring, because 'full community' requires, where necessary, that the better-off voluntarily help the worse-off so that, where possible, their lives labor under similar challenges.

Secondly, Mason argues that both his ordinary and moralized conceptions of community have non-instrumental value in virtue of element i. A shared way of life understood as a set of rule governed practices for social, political and

⁷ For the relevant discussion, see Mason, 2000, pp. 51-54.

economic activity is *cooperative activity*, which Mason says, ‘seem[s] to be valuable for its own sake’ (Mason, 2000, p. 50). But he then casts doubt on this *prima facie* conclusion by considering whether cooperative activity has non-instrumental value when its intended or realized end constitutes something bad; for example, we might imagine the genocide at Auschwitz that resulted from the cooperative activity of the SS. Of course, it is difficult to sustain the view that cooperative activity has non-instrumental value when its realized end is mass murder. Mason is therefore right to conclude that (i) a shared way of life has non-instrumental value only when the intended or realized end of its cooperative activity is something good (Mason, 2000, pp. 50-51).

Despite the ‘shared life’ as regards similarity of challenge involved in the community principle’s first mode, Mason’s first constitutive element of community is not synonymous with it: *a shared way of life* as set of rule governed practices for social, political and economic activity, is not the *full community* that obtains when large regrettable choice and/or option luck inequalities are kept within some range that ensures people’s lives, where possible, labor under similar challenges as a result, where necessary, of the better-off voluntarily helping the worse-off. The latter does not involve cooperative activity and so it cannot be non-instrumentally valuable in the same way as the former. But, Cohen’s second mode of communal caring, despite once again bearing no resemblance to Mason’s element i, is quite literally cooperative activity: communal reciprocity obtains when people cooperate in helping each other to satisfy their needs and/or wants through comparable generosity. Thus,

with the caveat that the realized needs and/or wants are morally good, communal reciprocity has non-instrumental value in virtue of being cooperative activity.

3. Community or sufficiency?

3.1. Now that I have clarified the community principle, I turn to considering whether Cohen is right that we ought to forbid large inequalities permitted by luck egalitarianism, and if so, whether we ought to because they undermine community or because of some other value or reason. An appropriate starting point is Elizabeth Anderson's seminal critique of luck egalitarianism.

Anderson argues that since luck egalitarianism holds that inequalities resulting from voluntary choice on the part of the bearer are *prima facie* just, because the bearer can, in virtue of that choice, be held personally responsible for her relative disadvantage, it implausibly mandates leaving imprudent people to bear the consequences of their choices no matter the severity of their disadvantage (Anderson, 1999, pp. 295-296). To illustrate, consider the following case.

The Reckless Driver: Reckless Richard makes a voluntary choice to drive recklessly and consequently has an accident that leaves him severely injured. Richard's injuries are the result of bad option luck, because in the absence of coercion and with full knowledge of the potential consequences, he nevertheless voluntarily chose to partake in risk. Richard will make a full recovery if his injuries are treated but will suffer

severe physical and/or mental impairment if his injuries go untreated. And, Richard cannot afford to pay for the medical treatment he requires.

According to luck egalitarianism, because Richard's injuries are the product of bad option luck it is reasonable to hold him responsible for any disadvantage he incurs, and so there is no *prima facie* injustice in leaving his injuries untreated with the consequence that he develops a severe physical and/or mental impairment. Anderson calls this 'the problem of the *abandonment of negligent victims*' (Anderson, 1999, p. 296); the problem being that leaving victims of bad option luck to bear the consequences no matter how severe one's disadvantage does not sit well with our intuitions about distributive justice.

The response I favor to this problem is to embrace a pluralist distributive ethic.⁸ Luck egalitarians can then argue that the problem of the abandonment of negligent victims, rather than show luck egalitarianism to be implausible, shows it only to be incomplete. For it is open to luck egalitarians to embrace a sufficientarian qualification which says, even though inequalities resulting from voluntary choice on the part of the bearer are *prima facie* just, because the bearer can, in virtue of that choice, be held personally responsible for her relative disadvantage, we ought not to leave people to bear the consequences of their voluntary choices when the effect is their falling below a threshold of what is required in order to live a decent life. The reason we ought not to allow it is that insufficiency for the imprudent is morally more repugnant than securing sufficiency for all, either through restricting people's negative freedom to

⁸ See Chapter 3, section 4.2

participate in risk and/or through forcing the prudent to bear the costs of other's imprudence.

Andrew Williams favors this sufficientarian response. As he specifies the relevant qualification, it says: 'individuals have weighty claims against suffering certain forms of absolute deprivation that cannot be relinquished through voluntary decisions, no matter how favorable the background conditions. Thus, only some inequalities can be justified by appealing to personal responsibility' (Williams, 2008b, p. 501). Paula Casal likewise recognizes that instead of rejecting luck egalitarianism in response to Anderson's critique, 'it may be preferable merely to supplement luck egalitarianism with a sufficiency principle that tempers its concern for choice and responsibility. We might, then, favor a form of *sufficiency-constrained luck egalitarianism*, which allows that some inequalities in outcome may arise justly but denies that individuals' having less than enough is ever justifiable by appeal to voluntary choice' (Casal, 2007, p. 322).

Liam Shields brings further clarity by distinguishing sufficiency-constrained egalitarianism from prioritarianism. For unlike prioritarianism which holds that utility matters less as we move from the worst-off to the best-off, such that we ought to prioritize distributive benefits to the worse-off⁹, sufficiency-constrained luck egalitarianism holds that we ought to give distributive priority to the worse-off below the threshold but then after sufficiency is secured distribute according to some luck egalitarian principle of equality of opportunity. As Shields argues, [t]he sufficiency threshold, then, seems to mark a shift in the

⁹ See Chapter 3, section 2.2

nature of our reasons to benefit people further' that is absent in prioritarianism (Shields, 2012, p. 108).

Williams also adds clarity to the view by outlining two variants of sufficiency-constrained luck egalitarianism that differ according to how each secures sufficiency. The *internalizing* variant protects people from having to bear the costs of other's choices, but restricts the negative freedom of those partaking in risk by securing sufficiency through special taxes, compulsory insurance, and/or prohibition on activities that could result in them falling below the threshold. The *externalizing* variant, on the other hand, secures sufficiency by spreading liability for people's imprudence across society by means of a welfare state funded by coercive redistributive taxation, and therefore effectively forces tax payers to bear the costs of other's imprudence (Williams, 2008b, pp. 501-502).

With respect to the externalizing variant, the balance of what is more abhorrent out of abandoning negligent victims or forcing the prudent to bear the costs of other's imprudence will largely depend on how well-off the prudent are. That is to say, it will depend on whether the prudent can bear the costs of others' imprudence without significantly disadvantaging themselves. Of course, 'significant disadvantage' is an ambiguous notion and I am uncertain as to where we draw the line between it and 'insignificant disadvantage,' but I do not believe the rich or even the middle-class to be significantly disadvantaged by progressive tax systems. For example, if middle-class Michelle, as a result of progressive taxation that secures sufficiency, has to holiday in the south of Spain rather than her preferred destination of the Caribbean, or has to settle for a three-bedroom

semi-detached house rather than the four-bedroom detached house she prefers, I do not consider her to be significantly disadvantaged.

No doubt some will disagree and consider Michelle to be significantly disadvantaged in these cases, and I do not deny that there is unfairness in her having to bear the costs of other's imprudence.¹⁰ For this reason, it is preferable to secure sufficiency, at least to the greatest extent possible before turning to progressive taxation, by those means associated with the internalizing variant. That is to say, because of the unfairness involved in the prudent having to bear the costs of other's imprudence, we ought to secure sufficiency to the greatest extent possible through special taxes, compulsory insurance, and/or prohibition on reckless activities, before funding the remainder of what is required to secure sufficiency through a welfare state funded by coercive redistributive taxation. Thus, I favor a sufficiency-constrained luck egalitarianism that seeks to minimize the unfairness of the prudent having to bear the costs of other's imprudence.

3.2. I have argued that we ought to temper luck egalitarianism with a sufficiency qualification so that people are prevented from falling below a threshold of what is required in order to live a decent life. Above the threshold, however, I have pressed no objection to inequalities permitted by luck egalitarianism. For example, in the above regrettable choice and option luck cases¹¹, if voluntary choice on the part of the bearer results in her suffering inequality but she does not fall below a sufficiency threshold, I have pressed no objection, all else being equal, to leaving her to suffer the consequences of her voluntary choice, because

¹⁰ For more thorough evaluations of whether we ought to abandon negligent victims, which take into consideration a variety of factors, see Olsaretti, 2009, and Stemplowska, 2009.

¹¹ See section 2.1

she can, in virtue of that choice, be held personally responsible for her relative disadvantage. Is the same true of the community principle? Is it, in all but name, a sufficiency qualification to luck egalitarianism, or does it require a more demanding tempering of luck egalitarianism?¹²

As we have seen, Cohen argues that, despite being permitted by luck egalitarianism, realization of a socialist ideal requires that large regrettable choice and/or option luck inequalities be tempered by the community principle. In this respect, Cohen's socialist ideal requires the community principle's first mode of communal caring to obtain. As I have interpreted the principle's first mode, this requires that the relevant inequalities are kept within a range that ensures people's lives, where possible, labor under similar challenges as a result, where necessary, of the better-off voluntarily helping the worse-off in the form of resource transfers. If the community principle's first mode is to be understood in terms of a sufficiency qualification to luck egalitarianism, it would therefore have to be true that the range in which the relevant inequalities must be kept is *any* range where those at the lower end of the scale enjoy a decent life.

One might point to Cohen's characterization of socialist egalitarians in his Tanner Lecture as evidence in support of interpreting the community principle as a sufficiency qualification. For as we saw in Chapter 3, Cohen there characterizes socialist egalitarians as having 'no strong opinion about inequality at millionaire/billionaire levels. What they find wrong is that there is, so they think, unnecessary hardship at the lower end of the scale' (Cohen, 2008, p. 31).¹³

One might also point to Cohen's characterization of the car-driver being rich and

¹² Although he does not claim that Cohen intends it as a sufficiency qualification, Pablo Gilabert explores and defends a sufficientarian interpretation of the community principle (Gilabert, 2012).

¹³ See Chapter 3, section 2.1

the bus-commuter being poor, and elsewhere, in illustrating the community principle's first mode, to campers eating meagerly whilst a fortunate other, due to option luck, has access to a special high grade fish pond (Cohen, 2009, p. 37), as suggestive of a concern for tempering the relevant inequalities only when the disadvantaged are impoverished as a result. However, just as Cohen's characterization of socialist egalitarians in his Tanner Lecture should not be interpreted as evidence of a sufficientarian concern with respect to his view that Pareto-efficiency often trumps distributive justice¹⁴, nor should it and these additional characterizations be viewed as evidence in support of interpreting the community principle's first mode as a sufficiency qualification to luck egalitarianism.

As I interpret Cohen it is partly constitutive of people enjoying full community, which is what the community principle's first mode is supposed to achieve by tempering those inequalities consistent with luck egalitarianism, that people's lives, where possible, labor under similar challenges. We should not therefore interpret the community principle's first mode as a sufficiency qualification, because we can imagine very large regrettable choice and/or option luck inequalities where those at the lower end of the scale, as a result of the better-off voluntarily helping the worse-off, enjoy a decent life, but nevertheless lead lives that labor under significantly different challenges to the better-off. As we have seen, Cohen refers to tenfold income inequalities and widely different powers to care for oneself and one's family as illustrative of people who do not

¹⁴ See Chapter 3, section 2.2

enjoy full community.¹⁵ For example, imagine that market conditions and A's circumstances are such that a sufficiency threshold for her is £20k p.a. Then imagine that due to regrettable choice and/or bad option luck, A falls below that threshold to the point of £19K p.a., and B, who earns £200k p.a., voluntarily transfers £1k p.a. to A. Sufficiency is secured, and it is secured as a result of the better-off voluntarily helping the worse-off, but there can be little doubt, because of the more or less tenfold income inequality that remains, that A and B's lives labor under significantly different challenges and that they enjoy widely different powers to care for themselves and their families.

In addition, there is a second important respect in which the sufficiency-constrained luck egalitarianism I embrace and Cohen's community-constrained luck egalitarianism are distinct, and that is in the means by which each tempers luck egalitarianism. The former tempers luck egalitarianism either by internalizing and/or externalizing coercive means.¹⁶ That is to say, it secures sufficiency through special taxes, compulsory insurance, prohibition on activities that could result in people falling below the threshold, and/or through spreading liability for people's imprudence across society by means of a welfare state funded by redistributive taxation. Cohen's community-constrained luck egalitarianism, on the other hand, or more specifically the community principle's first mode of communal caring, tempers luck egalitarianism by keeping the inequalities it permits within a range that ensures people's lives, where possible, labor under similar challenges by means of, where necessary, the better-off *voluntarily* helping the worse-off in the form of resource transfers. Thus, unlike

¹⁵ See section 2.2, specifically Cohen's remarks prior to the bus commute example and that example's final sentence.

¹⁶ See section 3.1

the sufficiency-constrained luck egalitarianism I embrace, which tempers luck egalitarianism by means of state coercion, Cohen's community-constrained luck egalitarianism tempers luck egalitarianism by means of voluntary non-state agency.

3.3. Should we, then, temper luck egalitarianism with a sufficiency qualification so that people are prevented from falling below a threshold of what is required in order to live a decent life, but thereafter allow inequalities permitted by luck egalitarianism no matter their size? Or, should we embrace Cohen's more demanding community principle which tempers luck egalitarianism by keeping the inequalities it permits within a range that ensures people's lives, where possible, labor under similar challenges?

The non-instrumental caring that is constitutive of the community principle is desirable because if people non-instrumentally care for each other in those ways it describes, no individual would fall, as a consequence of inequalities permitted by luck egalitarianism, below a sufficiency threshold. That is, when equality of opportunity obtains, and when the better-off voluntarily help the worse-off where necessary and possible, and where everyone gives because others need or want with only an expectation of comparable generosity, all are guaranteed a decent life even if they are personally responsible for inequalities that would, in the absence of such non-instrumental caring, leave them unable to live a decent life. But that would also be true if society were to realize luck egalitarianism constrained by a sufficientarian qualification. And I struggle to think of any reason weighty enough to justify further tempering inequality

through special taxes, compulsory insurance, prohibition on reckless activities, and/or coercive redistributive taxation that requires the prudent to unfairly bear the costs of other's imprudence, when everyone is guaranteed a decent life and no inequalities exist for which people cannot be held personally responsible. But this line of thought is no objection to Cohen's community-constrained luck egalitarianism, because rather than temper luck egalitarianism to a greater extent than sufficiency-constrained luck egalitarianism by coercive means, the community principle tempers luck egalitarianism to a greater extent than a sufficiency qualification by means of voluntary non-state agency.

Nevertheless, as my concern is with what type of society we ought to seek, I am more concerned with what we ought to do in practice than with what is possible in principle. Thus, in evaluating the fourth view I indentify with Cohen's positive contribution to the question of what type of society we ought to seek, it is important to consider how it fares in light of the relevant social facts. As we saw in Chapter 2, Cohen agrees with Samuel Scheffler that 'only an extreme moral rigorist could deny that *every person has a right to pursue self-interest to some reasonable extent* (even when that makes things worse than they need be for badly off people)' (Cohen, 2008, p. 61).¹⁷ If that is true, if morality allows for this personal prerogative, the plausibility in practice of any distributive principle whose realization is dependent on non-state agency should be evaluated in terms of people's predictable use of it.

We might imagine, then, a society in which a sufficiency-constrained luck egalitarianism has been realized, and that, because of the unfairness

¹⁷ See Chapter 2, section 2.2

involved in the prudent having to bear the costs of other's imprudence, it is a sufficiency-constrained luck egalitarianism where sufficiency for all is secured to the greatest extent possible through special taxes, compulsory insurance, and/or prohibition on reckless activities, before turning to redistributive taxation. The redistributive taxation that is required in order to realize both the luck egalitarian principle of equality of opportunity and sufficiency will, of course, restrict the extent to which the members of this society can pursue self-interest. But they are not denied their right to pursue self-interest to a reasonable extent; they are merely denied the option of pursuing unlimited self-interest.

If the better-off members of this society were so inclined they could seek to realize Cohen's more demanding community-constrained luck egalitarianism. That is, the better-off could voluntarily choose to temper those inequalities consistent with luck egalitarianism to a greater extent than that already achieved by the state, by voluntarily transferring resources to the worse-off until everybody's lives, where possible, labor under similar challenges because no significantly large inequalities of resources exist between society's members. The realization of such a radically egalitarian society, at least when it is realized by voluntary rather than coercive means, could be valuable for all sorts of reasons. But when people are guaranteed a decent life and suffer no disadvantage above a sufficiency threshold for which they cannot be held personally responsible, not making the voluntary transfers of resources on which its realization depends surely falls within the better-off individual's right to pursue self-interest to a reasonable extent. As in all probability many of the better-off will exercise that prerogative, and because luck egalitarianism ought to be

tempered to avoid abandonment of the imprudent to unnecessary suffering, in practice equality of opportunity ought to be constrained by a sufficiency qualification that is realized by means of state coercion, rather than by Cohen's community principle, because the former *guarantees* a decent life for all whereas the latter does not.

4. Conclusion

The focus of this chapter has been how Cohen understands the relationship between equality of opportunity and community in principle. As we have seen, Cohen holds the view that, in principle, equality of opportunity ought to be constrained by a principle of community that is realized by means of voluntary non-state agency. This is the fourth view I identify with his positive contribution to the question of what type of society we ought to seek.

In identifying and clarifying the view, I began with Cohen's claim in *Why Not Socialism?* that, despite being consistent with a luck egalitarian principle of equality of opportunity, large regrettable choice and/or option luck inequalities undermine community and therefore a principle of community ought to temper equality of opportunity. Having identified this view I sought to clarify it by considering the means by which Cohen's community principle tempers equality of opportunity. In this respect, I argued that the community principle's first mode of communal caring, which is the mode that does the tempering, ought to be interpreted in light of what Cohen envisions it as achieving; namely, a social state of affairs where people 'enjoy full community.' For Cohen, this requires (i) that large regrettable choice and/or option luck inequalities are kept

within a range that ensures people's lives, where possible, labor under similar challenges, (ii) as a result, where necessary, of the better-off voluntarily helping the worse-off in the form of resource transfers.

In proceeding to evaluate Cohen's community-constrained luck egalitarianism, I considered whether Cohen is right that we ought to forbid large inequalities permitted by luck egalitarianism, and if so, whether he is right that we ought to forbid them because they undermine community or because of some other value or reason. I argued that, even though inequalities resulting from voluntary choice on the part of the bearer are *prima facie* just, because the bearer can, in virtue of that choice, be held personally responsible for her relative disadvantage, we ought not to leave people to bear the consequences of their voluntary choices when the effect is their falling below a sufficiency threshold of what is required in order to live a decent life. We ought not to allow this because insufficiency for the imprudent is more repugnant than securing sufficiency for all, either through restricting people's negative freedom to participate in risk and/or through forcing the prudent to bear the costs of other's imprudence. Yet because of the unfairness involved in the latter means of securing sufficiency it ought to be secured to the greatest extent possible by special taxes, compulsory insurance and/or prohibition on reckless activities before turning to redistributive taxation. Thus, I embraced a sufficiency-constrained luck egalitarianism that seeks to minimize the unfairness of the prudent having to bear the costs of other's imprudence.

As Cohen's community-constrained luck egalitarianism keeps those inequalities consistent with luck egalitarianism within a range that ensures

people's lives, where possible, labor under similar challenges, it is more demanding than the sufficiency-constrained luck egalitarianism I favor. For it requires that, even when those at the lower end of the scale enjoy a decent life, the inequalities consistent with luck egalitarianism be reduced to the extent that the lives of the worse-off and better-off labor under similar challenges. I argue that the value of community is not a weighty enough reason to justify such further tempering of inequality by coercive means when everyone is guaranteed a decent life and no inequalities exist for which people cannot be held personally responsible. This line of argument, however, is no objection to the community principle, because it tempers the relevant inequalities by means of the better-off voluntarily helping the worse-off.

Yet, because my concern is with what type of society we ought to seek, and thus with what we ought to do in practice rather than with what is possible in principle, I evaluated Cohen's community-constrained luck egalitarianism in light of people's predictable use of the personal prerogative he embraces in *Rescuing*. That is, I evaluated it in light of people's predictable use of their right to pursue self-interest to some reasonable extent (even when that makes things worse than they need be for badly off people). In this context, when all are guaranteed a decent life and no individual suffers disadvantage for which they cannot be held personally responsible, it falls within the better-off's prerogative not to voluntarily help the worse-off. As in all probability many of the better-off will exercise that prerogative, and because luck egalitarianism ought to be tempered so as to guarantee a decent life for all, I concluded that equality of opportunity ought to be constrained in both principle and in practice, and in

practice it ought to be constrained by a sufficiency qualification that is realized by means of state coercion, rather than by Cohen's community principle, because the former guarantees a decent life for all whereas the latter does not.

Conclusion

1. Argument and contribution

Since the publication of *Rescuing* in 2008 and Cohen's death in 2009 there have been a number of important publications that focus on evaluating his work; many of which I have referred to, sometimes critically, in writing this thesis. A 2008 special issue of *Ratio* is devoted entirely to essays by eminent political philosophers on *Rescuing* (re-published in paperback in 2009¹), whilst *The Journal of Ethics* in 2010, and *Socialist Studies* in 2012, have also devoted special issues to the evaluation of Cohen's political philosophy. In 2015 a collection of essays on Cohen's account of egalitarian justice has been published under the title, *Distributive Justice and Access to Advantage*, whilst the forthcoming monograph by Nicholas Vrousalis, *The Political Philosophy of G. A. Cohen: Back to Socialist Basics*, is due to be published shortly after submission of this thesis.

My distinctive approach has been to clarify and evaluate Cohen's positive contribution to the question of what type of society we ought to seek following his turn from Marxism to normative political philosophy. And, for those reasons outlined in the Introduction², in trying to answer this question I have specifically focused on his critical engagement with Dworkin and Rawls, and on his positive vision of society as set out in *Why Not Socialism?* In brief, and to somewhat oversimplify, I have interpreted Cohen as holding that, in principle, we ought to

¹ Feltham, B. et al (2009), *Justice, Equality and Constructivism: Essays on G. A. Cohen's Rescuing Justice and Equality*, ed. Brian Feltham, Oxford: Wiley-Blackwell.

² See Introduction, sections 3 and 4

seek a society that reflects equal access to advantage (or some kind of luck egalitarian principle of equality of opportunity³), together with Pareto-efficiency and freedom of occupational choice as a consequence of people's occupational choices being informed by an egalitarian-Paretian ethos, and a principle of community realized by means of voluntary non-state agency that significantly tempers inequalities consistent with equality of opportunity. I have additionally argued that his concession about Pareto-efficiency often trumping equality of opportunity, in practice, is best understood as a pluralist distributive ethic that combines telic egalitarian and telic prioritarian beliefs.

In evaluating equal access to advantage I have argued that, unlike a luck egalitarian principle of equality of opportunity where opportunities are specified in terms of resources, it is susceptible to the problem of indexing, the problem of perfectionism and the problem of expensive tastes, with the latter being reinforced by the appeal of the continuity test. To equalize advantage as Cohen specifies it requires the creation of an index of valuable states of the person and their relative worth so that an access to advantage score can be summed for each individual and compared against the scores of others. Consistent with a subjective theory of value the creation of such an index will prove implausible, whilst consistent with an objective theory of value derived from a perfectionist theory of the good-life, equal access to advantage conflicts with justificatory neutrality. If an objective index is to be derived by non-perfectionist means, then, Cohen must provide the relevant explanation, which he does not.

³ For clarification see Chapter 3, section 2.1, and Chapter 1, section 3.2.

These two problems aside, equal access to advantage counterintuitively compensates for expensive tastes when claims to compensation fail the continuity test. This test requires that the bearer of an expensive taste is able to claim in good-faith, as a consequence of her bad price luck, that others are better off in terms of opportunities consistent with her beliefs as to what makes for a valuable life. The continuity test is appealing because when we employ it we avoid the absurdity of compensating people for expensive tastes when, as in most cases, they do not consider themselves relevantly worse off. That equal access to advantage compensates for expensive tastes (when the claimant's access to advantage score is not equal to that of others) regardless of whether the bearer's claim to compensation passes the continuity test is a strong reason, in addition to the problems that plague the creation of the required index, not to embrace it. Thus, I have argued that the appropriate metric of egalitarian interpersonal comparison is not equal access to advantage, but rather an alternative luck egalitarian principle of equality of opportunity where opportunities are specified in terms of resources.

As regards Cohen's view that, in principle, equality of opportunity, Pareto-efficiency and freedom of occupational choice are co-obtainable when people's occupational choices are informed by the egalitarian-Paretian ethos, I evaluated this view in light of each person's predictable use of their right, for which Cohen believes morality allows, to pursue self-interest to a reasonable extent (even when that makes things worse than they need be for badly off people) (the personal prerogative). The first to point out that the personal prerogative is problematic for Cohen was David Estlund, who argues that if

Cohen allows for it he must also allow for a fraternal prerogative (a right to pursue the interests of one's family and/or friends to some reasonable extent even when that makes things worse than they need be for badly off people), and thus for the acceptance of unequalising incentives by the talented (Estlund, 1998, pp. 106-107). More recently, Jonathan Quong has argued, as I argue below, that the 'ethical solution requires morally supererogatory choices on the part of the talented..., [and therefore] only succeeds by relying on utopian assumptions about persons' (Quong, 2010, p. 329).

My approach in Chapter 2 was to argue that because the realization of Pareto-efficiency in practice likely requires occupations to be filled for which insufficient numbers of people will have a preference when reward is consistent with equality of opportunity, there will be numerous cases where it falls within one's prerogative either (i) to depart from the Paretian component of the egalitarian-Paretian ethos by filling a Pareto-*inefficient* occupation or by not working at her utmost capacity in a Pareto-efficient occupation, or (ii) to depart from the egalitarian component of the egalitarian-Paretian ethos by accepting unequalizing incentives to fill a Pareto-efficient occupation, rather than (iii) act in accordance with both components of the egalitarian-Paretian ethos by voluntarily choosing to fill a Pareto-efficient occupation, and to work at her utmost capacity in that occupation, for reward consistent with equality of opportunity. The three desiderata are therefore co-obtainable only if either we deny people recourse the personal prerogative or people do not exercise it with respect to their occupational choices.

If morality allows for such a prerogative we ought not to deny people recourse to it, and so the desiderata co-obtain only if people choose not exercise it when making occupational choices about how hard to work and what occupation to fill. Yet people will inevitably exercise their right to pursue self-interest to a reasonable extent when making such occupational choices. The upshot is *inequality* of opportunity and/or Pareto-*inefficiency* to a significant degree. Thus, I have argued that although equality of opportunity, Pareto-efficiency and freedom of occupational choice might⁴ be co-obtainable in principle, they are not co-obtainable in practice. Although this is no critique of Cohen, because his concern is with what is possible in principle, it is important to clarify that in practice we must either deny people freedom of occupational choice, which virtually nobody would endorse, or sacrifice or compromise at least one of equality of opportunity or Pareto-efficiency.

As we must choose in practice between either the sacrificing or compromising of at least one of equality of opportunity, Pareto-efficiency and freedom of occupational choice, I sought to clarify and evaluate Cohen's view that, in practice, the state should often compromise equality of opportunity in the name of realizing Pareto-efficiency. As this view is not fully developed by Cohen it is somewhat open to interpretation. I therefore offered an interpretation of the view by considering it in the context of: (i) Cohen's distinction between fundamental principles of justice and *state* rules of regulation; (ii) certain remarks of his about the equality-Pareto-freedom trilemma; (iii) his own clarifications in a section on justice and Pareto-efficiency in *Rescuing Part II*; (iv)

⁴ 'Might' rather than 'are' because whether the three desiderata are co-obtainable in principle depends on whether the egalitarian-Paretian ethos is a requirement of distributive justice and on how we conceptualize freedom. See Chapter 2, section 4.2

conclusions he draws elsewhere that match those clarifications; and (v) where it sits in relation to Derek Parfit's distinctions between teleological and deontological egalitarianism, and between egalitarianism and prioritarianism. These considerations led me to argue that the view is best understood as a pluralist distributive ethic that combines telic egalitarian and telic prioritarian beliefs. It says that some kind of luck egalitarian social state of affairs – because fair – has non-instrumental value, but the state should often pursue Pareto-efficiency over a luck egalitarian principle of equality of opportunity because a social state of affairs in which people, and particularly the worst-off, enjoy greater benefits is non-instrumentally more valuable than egalitarian justice.

Due to its pluralism Cohen's egalitarian-prioritarian ethic faces objections from either side of the "equality, priority or what?" debate. I therefore evaluated it by considering how it fares given the levelling down objection to telic egalitarianism and the Otsuka-Voorhoeve objection to prioritarianism. As I share Cohen's belief that, although we ought not to level down, some kind of luck egalitarian social state of affairs – because fair – has non-instrumental value and is thus in *one way better* than the unequal alternative even when it is better for no one, I argued, by drawing on Larry Temkin's work, that the levelling down objection does not decisively show telic egalitarianism to be implausible. In response to the Otsuka-Voorhoeve objection I embraced Martin O'Neill's pluralist reply, which says that the objection shows prioritarianism to be incomplete rather than implausible, because any pluralist prioritarian can explain the greater priority to benefit the badly-off when we move from intrapersonal to interpersonal cases by appeal to egalitarian considerations. My evaluation

therefore took the form of a limited defence. For although I went on to embrace a sufficiency-constrained luck egalitarianism, which does not prioritize distributive benefits to the worst-off after sufficiency has been secured for all, I have nevertheless argued that neither the levelling down objection nor the Otsuka-Voorhoeve objection shows Cohen's egalitarian-prioritarian ethic to be implausible.

With respect to Cohen's view that, in principle, equality of opportunity ought to be constrained by a principle of community that is realized by means of voluntary non-state agency, others have argued, as I have, that the principle's second mode of communal caring takes inspiration from Marx's principle of 'from each according to his ability, to each according to his needs.' Yet unlike Vrousalis, I have argued that the community principle's first mode of communal caring, which is the mode that does the tempering, ought to be interpreted based on the 'full community' Cohen envisions it as achieving, as opposed to the bus commute example and its interpersonal utterance which serves only to muddy the water. This marks an important difference between Vrousalis's interpretation and my own, as by clarifying the principle's first mode by reference to the bus commute example I have argued that his reading of it as 'something like' Cohen's notion of a justificatory community is a misinterpretation. My approach, on the other hand, produces a reading of the first mode that sees it as distinct from justificatory community, and as tempering large regrettable choice and/or option luck inequalities to the extent that they are kept within a range that ensures people's lives, where possible, labor under similar challenges, as a result,

where necessary, of the better-off voluntarily helping the worse-off in the form of resource transfers.

In evaluating the view I considered whether we ought to forbid large inequalities permitted by luck egalitarianism, and if so, whether we ought to forbid them because they undermine community or because of some other value or reason. I argued that, even though inequalities resulting from voluntary choice on the part of the bearer are inequalities for which she can be held personally responsible, we ought not to leave people to bear the consequences of their voluntary choices when the effect is their falling below a sufficiency threshold of what is required in order to live a decent life. Ultimately, I came to embrace a sufficiency-constrained luck egalitarianism that secures sufficiency for all through special taxes, compulsory insurance and/or prohibition on reckless activities before turning to redistributive taxation, so that the unfairness of the prudent having to bear the costs of other's imprudence is minimized.

As Cohen's community-constrained luck egalitarianism keeps those inequalities consistent with luck egalitarianism within a range that ensures people's lives, where possible, labor under similar challenges, it is more demanding than sufficiency-constrained luck egalitarianism; although it achieves the even more radically egalitarian social state of affairs by means of the better-off voluntarily helping the worse-off, rather than by means of state coercion. Despite Cohen's view again being about what is possible in principle, I once again evaluated it based on each person's predictable use of the personal prerogative, because my concern is with what type of society we ought to seek, and therefore with what we ought to do in practice. In this context, when all are

guaranteed a decent life and no individual suffers disadvantage for which they cannot be held personally responsible, it falls within the better-off's right to pursue self-interest to a reasonable extent (even when that makes things worse than they need be for badly off people) not to voluntarily help the worse-off. As in all probability many of the better-off will exercise that prerogative, and because luck egalitarianism ought to be tempered so as to guarantee a decent life for all, I have argued that equality of opportunity ought to be constrained in both principle and in practice, and in practice it ought to be constrained by a sufficiency qualification that is realized by means of state coercion, rather than by Cohen's community principle, because the former guarantees a decent life for all whereas the latter does not.

2. Cohen's utopianism

I now end the thesis by reflecting on the utopian nature of Cohen's normative political philosophy. In the Introduction I noted one might object, with respect to my evaluation of Cohen's views that, in principle, equality of opportunity, Pareto-efficiency and freedom of occupational choice are co-obtainable when people's occupational choices are informed by the egalitarian-Paretian ethos, and that equality of opportunity ought to be constrained by a principle of community that is realized by means of voluntary non-state agency, that I am talking at cross purposes with Cohen.⁵ The reason for the objection is that these views are about what is possible in principle when we abstract from social facts, yet I evaluate them based on people's predictable use of the personal prerogative, and therefore

⁵ See Introduction, section 4.6

in light of a social fact, and reach conclusions not about what is possible in principle, but about what is possible, and about what we ought to do, in practice.

To repeat my earlier response, I once again emphasize that I do not frame my conclusions about these views as objections. On the contrary, I repeatedly acknowledge that they are not objections. Moreover, even though it is open to Cohen to agree with my conclusions about what is possible, and about what we ought to do, in practice, these conclusions are nevertheless important when clarifying and evaluating his positive contribution to the question of what type of society we ought to seek, because they show it to be utopian.

As Christine Sypnowich argues, Cohen is ‘in a significant sense a utopian socialist, not in Marx’s sense of offering ‘fantastic’ predictions about an ideal future, but insofar as he was prepared to endorse a radical alternative to existing society’ (Sypnowich, 2012, p. 27). That is, in the sense that he ‘was adamant that one should not give up on an ambitious aspiration for an emancipated human society. This is manifest in his commitment to a radical approach to justice based on ‘principles’ rather than ‘facts,’ and moreover his contention that a consistent egalitarianism involves personal contribution to the amelioration of disadvantage’ (Sypnowich, 2012, p. 21). But how utopian should we be, in the sense of abstracting from social facts, when doing normative political philosophy?

Cohen’s view, of course, is that we ought to abstract from social facts when seeking to discover fundamental principles, but we ought to take into account the relevant social facts when developing rules of regulation, because when it comes to how we ought to organize society in practice, the relevant

social facts inevitably restrict the extent to which fundamental principles can be applied. Sypnowich appears to endorse something like this approach when she says, '[w]e should, like Cohen, affirm the utopian aspiration in political philosophy without falling prey to a utopianism about how to achieve that aspiration' (Sypnowich, 2012, p. 32). My view, however, is that by abstracting from people's predictable use of the personal prerogative, and therefore from a particularly relevant social fact, the relevant views I identify as part of Cohen's positive contribution are excessively utopian even in aspiration.

In Chapter 2 we saw that Cohen believes every person has a right to pursue self-interest to some reasonable extent (even when that makes things worse than they need be for badly off people), because denial of this prerogative would be tantamount to viewing people as 'nothing but slaves to social justice' (Cohen, 2008, p. 10).⁶ In general, those who embrace such prerogatives do so because they consider utilitarianism and other consequentialist ethical theories overly demanding. For example, if I am morally required to do that which produces the greatest overall impartial good, I am guilty of wrongdoing *whenever* I spend sixty pence on a chocolate bar rather than donate my sixty pence to Oxfam. If that strikes us as overly demanding, and thus counterintuitive, we might be tempted to adopt the view that morality allows for a prerogative of the sort embraced by Cohen. That is, we might be tempted to embrace the view that morality allows some room for people to pursue self-interest even when the consequence is less overall impartial good. If that is true, it falls within my prerogative to *at least sometimes* satisfy my craving for a Cadbury Twirl rather

⁶ See Chapter 2, section 2.2

than donate all the money I would ever spend on chocolate to Oxfam. Those who embrace prerogatives would not deny that in this case, and others like it, it would be good if I act to produce greater overall impartial good; they hold only that it is *at least sometimes* a supererogatory act.

Now, the human capacity for selfishness is a social fact from which we must abstract to some extent when doing normative political philosophy, otherwise we simply give in to human badness. As Sypnowich argues, ‘political philosophy cannot be reduced to a mere assent to the world as we find it; it must be a normative enterprise, concerned with human progress and social improvement’ (Sypnowich, 2012, p. 31). But if morality allows for a personal prerogative, so that when people exercise it they are not guilty of wrongdoing, to take into account its predictable use, and therefore a social fact, is by definition not to accommodate human badness within our ethical thinking. It is not, we might say, to be guilty of holding a normative political philosophical view that is *insufficiently* utopian. On the contrary, if one believes that morality allows for a personal prerogative, but presses a view which rests on people not exercising it, that view is by their own lights overly demanding. It is, we might say, to be guilty of holding a normative political philosophical view that is, by one’s own standards, *excessively* utopian.

The relevant views I identified as part of Cohen’s positive contribution are both views of the latter sort. The first of these views is that equality of opportunity, Pareto-efficiency and freedom of occupational choice are co-obtainable when people’s occupational choices are informed by the egalitarian-Paretian ethos. Yet Cohen believes morality allows for the personal prerogative,

and, as I have argued, the three desiderata are co-obtainable only if either we deny people recourse to the personal prerogative or people do not exercise it with respect to their occupational choices. The view is therefore overly demanding by Cohen's own lights, and in that sense, it is excessively utopian. The second of these views is that equality of opportunity ought to be constrained by a principle of community, to the extent that people's lives, where possible, labor under similar challenges, and which is realized by means of voluntary non-state agency. Yet, as I have argued, when all are guaranteed a decent life and no individual suffers disadvantage for which they cannot be held personally responsible, it falls within the better-off's personal prerogative not to voluntarily help the worse-off. Again, the view is overly demanding by Cohen's own lights.⁷

In addition to this excessive utopianism, there is another respect in which I find the utopian nature of Cohen's positive contribution disappointing, and that is in its focus on fundamental principles to the detriment of rules of regulation. For, although conceptual knowledge might lead us toward different justifications and conclusions about what we ought to do than conceptual ignorance, action-guiding conclusions should be our ultimate goal. Contrary to that claim, Cohen maintains that although 'political philosophy is a branch of philosophy, whose output is consequential for practice..., the question for political philosophy is not what we should do but what we should think, even when what we should think makes no practical difference' (Cohen, 2008, p. 268). I would argue, however, that when what we should think makes no practical difference, there is little to be

⁷ Although Cohen does not refer to the personal prerogative in *Why Not Socialism?*, he believed in it at the time of writing. Since he embraces the personal prerogative in his 1991 Tanner Lecture, ten years prior to the first publication of *Why Not Socialism?*, and remains committed to it in the 2008 reprinting of the lecture in *Rescuing*.

gained from thinking about it, and we should concentrate instead on thinking about what we ought to do.

Cohen imagines a defender of Rawls making a similar point. This imaginary Rawlsian says, “‘I accept your distinction between basic principles and principles of regulation. But why should I care about basic principles? I care about what we should *do*, and the rules of regulation that we adopt in light of the facts determine that’” (Cohen, 2008, p. 267). Cohen’s response is that ‘we necessarily have recourse to basic principles to justify the rules of regulation that we adopt: facts cast normative light only by reflecting the light that fact-free first principles shine on them’ (Cohen, 2008, p. 267). And again later, he argues, ‘fundamental principles *do* bear on practice, since they are needed to justify the practice-guiding ruler of regulation’ (Cohen, 2008, p. 307). But, even if it is true, even if contrary to a contractualist methodology we need to know what the fundamental principles of justice and other values are in order to justify rules of regulation, action-guiding conclusions, and thus development of a set of rules of regulation, should be our ultimate goal.

Of course, there is only so much one can say in a career, and so it is somewhat unfair of me to criticize Cohen for not making the move from locating fundamental principles to justifying a set of rules of regulation. But considering his turn from Marxism to normative political philosophy was originally motivated by a belief that leftists need to be clearer about what we seek and why we are justified in seeking it, I cannot help but feel somewhat disappointed. As, despite my clarification in Chapter 3 of his undeveloped view that, in practice, Pareto-efficiency often trumps distributive justice, it is by no means clear what

type of society Cohen thinks we ought to seek in practice when taking into account a plurality of values and the relevant social facts. Bearing in mind his undoubted genius, this strikes me as a great shame.

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